B232 BY:T

Sydney Alleyne

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

A

# SELECTION

OF

# PRECEDENTS,

FROM

*THE BEST MODERN MANUSCRIPT COLLECTIONS,*

AND

## Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS, AND VARIATIONS,

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

# SYSTEM OF CONVEYANCING;

WITH

*DISSERTATIONS, AND PRACTICAL NOTES.*

---

*IN CONTINUATION OF THE WORK*

BY THE LATE

W. M. BYTHEWOOD,

OF LINCOLN'S INN, ESQ. BARRISTER AT LAW.

---

BY

WILLIAM PALMER PARKEN, OF THE INNER TEMPLE, ESQ.

AND

JAMES STEWART, OF LINCOLN'S INN, ESQ.

BARRISTERS AT LAW.

VOL. V.

LONDON:

PRINTED FOR R. PHENEY, 17, FLEET STREET,

Law Bookseller and Publisher.

1831.

G. H. DAVIDSON, PRINTER,
IRELAND YARD, BLACKFRIARS.

LEASES (*continued*) . . . . . }
LETTER OF ATTORNEY . . . |
LETTER OF CREDIT . . . . . |
LETTERS OF ADMINISTRATION |
LETTER OF LICENSE . . . . . } BY MR. STEWART.
LETTERS PATENT . . . . . |
LICENSE . . . . . |
MANUMISSION . . . . . |
MEMORIAL . . . . . }
MORTGAGES . . . . . BY MR. PARKEN.

Digitized by the Internet Archive
in 2025

https://archive.org/details/selectionsofprec0005will

# CONTENTS.

## LEASES

*(Continued.)*


LEASE of Rectory and Tithes, by the Rector of a Parish; Covenants by Lessee to Repair Chancel, and Indemnify Lessor from any Charges for Dilapidations thereof - - - - - - - Page 1 — Of rectory and of tithes.

Underlease of the Tithes of a Farm and Lands to the Occupier thereof; Covenants by Lessee for the Payment of Rent and Taxes: Provisoes for determining the Lease on Non-payment of Rent, and that no Change of Cultivation shall affect the Rent - 5 — Of tithes.

Underlease of Tithes by a Rector who holds under an Ecclesiastical Corporation, to the Occupier of a Farm, the Underlease being made with their Assent - - - - - - - - 8 — Of tithes.

Lease of a Mansion House and Grounds; Covenants by the Lessee to keep Gardens in Order; that he will not cut down the Fruit Trees; nor Fell Timber; to keep Premises in Order; to plant Shrubs at proper Seasons: Power of determining Lease at the End of and Years of the Term; Covenant by Lessor to pay Taxes, and for Quiet Enjoyment (with a Covenant for completing the Mansion House, and expending a certain Sum thereupon) - 11 — Of mansion house and grounds.

Of allotment under inclosure act. Lease of a Piece of Land, allotted under an Inclosure Act; Covenants by Lessee to make all necessary Fences and Hedges, and keep them in Repair; Power to Lessor to view State of Repair - - 17

Of a messuage, under a power. Lease of a Messuage by Virtue of a Power in a Will, containing the usual Clauses - - - - - 20

Of chambers by tenants in common. Lease of Chambers by Tenants in Common, with usual Clauses and Provisions - - - - 26

For three lives, with covenant for perpetual renewal. Lease of Lands situate in Ireland, for Three Lives; with Powers of Mining, Digging Marble, &c., and without Impeachment of Waste; Power of Re-entry on Non-payment of Rent; Covenant by Lessee to pay Rent; Covenant by Lessor for perpetual renewal of the Lease; Covenant by Lessee to Accept the Renewed Lease; Covenant by Lessor for Quiet Enjoyment, and for further Assurance - - - - 31

By mortgagee and mortgagor. Lease by Mortgagee and Mortgagor, of a House and the Appurtenances, for a Term of Years, with usual Clauses: Power to Mortgagor to Distrain - 37

By committee of lunatic. Lease by the Committee of a Lunatic and the Lunatic, for Years - - - - - - - 43

By husband and wife. Lease by Husband and Wife, of Lands belonging to the Wife - - - - - - - - 54

Of coal mines. Lease of Coal Mines to Two Lessees as Tenants in Common; Description of Parcels by a Reference to Plan; Power to build and rebuild Houses, &c., and, for the Purpose of building the same, to dig for Stones, &c.; Reservation of Right of Way to Lessor, and Power of Entry to view State of Premises; Reservation of a yearly Rent, payable yearly; Covenants by Lessee for the Payment of the Rent and Taxes; and to

fence Pits; and do as little Injury as possible to the Surface of the Closes; not to injure the Houses by undermining the Foundations, and not to dig Stone except for the Purposes aforesaid; to give Notice to Lessor on ceasing to work any Pit, and permit Lessor to work for Iron therefrom; and to fill up all other Pits; and to remove all Roads made by him; and to repair all Hedges; and remove Rubbish; and surrender Premises at the End of the Term; and permit Lessor, his Servants and Agents, to enter and View the State thereof. Agreement that Lessee may purchase Utensils at the End of the Term. Agreement that, if any Injury shall be done to the Premises, Lessee shall pay the Damage; the Amount to be ascertained by Arbitration. Agreement that, when all the Coals shall be exhausted, Term shall cease. Proviso, that if Lessee shall be desirous of having a further Lease, Lessor will execute a fresh Lease thereof - - - - - - - - 59

Lease of Lead and Copper Mines, with necessary Privileges for working the same; Reddendum of One-fifth Part of Produce to Lessor; Covenants by Lessor to search for Mines, and to enter upon such Search before the Day of , and employ proper Workmen; and when a certain Quantity of Ore shall be washed, to remove it into a Storehouse; and that the Ore shall not be delivered out of Storehouse until it is weighed, and a Fifth Part delivered to Lessor; and that Lessee will weigh Ore whenever required; Agreement that both Lessor and Lessee shall keep a Lock and Key of the Storehouse in which the Ore is kept, and that Lessee will find sufficient Room in Storehouse for Lessor's One-fifth; and that Lessee will weigh waste Ore, and deliver One-fifth to Lessor; and that Lessee will deliver up Premises at the End of the Term, and will pay Damages to be sustained in the Management of the Work - - - - - - - - 70 Of mines.

By guardian and ward. Lease by Guardian and Ward of a Dwelling-house, for Years, with usual Clauses and Provisions - 74

Of a right of way. Lease of a Right of Way. Covenants to Lessee to pay Rent, and not to use the Right of Way in any way which may become a Nuisance to Lessor. Power to distrain on Premises belonging to Lessee, if Rent shall be in Arrear for Twenty-one Days. Power to determine the Lease by Notice from the Lessor, on the Rent being in Arrear for Forty Days. Covenant by Lessor for quiet Enjoyment - - - 86

Of lands and coal mines. Lease of Lands and Coal Mines, with Liberty to dig for and work Mines, and to make Roads, and get Stone, Sand, and Brick Earth, and burn Bricks for the Use of the Mines, and to lay Dry the Mines; Reddendums of a Surface Rent for the Lands, and additional Rents and Royalties for the Coal, and additional Rent if Tons shall not be raised every Week, and also an additional Rent for every Sack of Coke; Covenants by Lessee to pay Rents and Taxes, and to deliver Account of Coals sold, and pay Taxes, and to keep Premises in Repair; that he will open Mines and raise Tons of Coal per Week, or pay additional Rent; to work Mines in a proper Manner, and not to work too close to the Pillars; to level the Ground so as to make it Ploughable, and fill up the useless Pits; Power for Lessor to inspect the Manner of working the Mines, and if improperly worked, to give Notice to Lessee to stop working until Satisfaction; Covenant by Lessor that he will provide Books to enter quantity of Coal, and Liberty for Lessor to inspect Books; Proviso that Royalties shall be paid in Money, or Bills on London; Power to Lessor to fix Board on Premises for letting the same; that Lessee will quit at the Expiration of the Term; Lessee to have the Use of the Tools during the Term, and Lessor to have the Option of purchasing the same at the End of the Term; Covenants by

Lessor that he has good Right to make the Lease, and for quiet Enjoyment; Arbitration Clause (with Variations in Notes) - - - - - - 90

Finishing Lease granted by a Nobleman, Description of Parcels by a Plan, Covenants by Lessor to finish House, and not to make Bow Windows, and that he will give Notice to Lessor of all Assignments 113 — Finishing lease.

Lease to Partners: Covenants by Lessees to pay Rent and Taxes, and their Share of Expenses of Party Walls, and of cleansing the Drains, and to empty them the last Year of the Term; not to carry on certain Trades; not to make Bow Windows, or obstruct the Light of the Neighbours; that they will not assign without Notice, and will not assign during the last seven Years without consent; Power to Lessor to fix Notices during the last six Months of the Term; Power to determine Lease at the End of Seventeen or Fourteen Years: Covenant by Lessor to repair the Outside of the Premises; Power to Lessees to purchase the Premises - - - - - 118 — To partners.

Lease by Executors of a Dwelling-house; Covenants by Lessee to pay Rent and Taxes; to repair; to paint Outer-work; to insure Premises to a certain Value, and expend the Money recovered on the Premises; Agreement that, if Lessee shall not insure, Lessors may do so; Proviso for Suspension of Rent in case of Fire: Covenants by Lessee not to assign without License of Lessors; not to carry on certain Trades, and to leave Premises in Repair: Power to Lessors to enter upon the Premises to view the State of Repair; Power for Lessors to enter upon the Premises, if Default shall be made in the Payment of Rent, or on the Non-performance of Covenants: Covenant by Lessors for quiet Enjoyment of Lessee: Proviso for determining Lease on Bankruptcy of Lessee 124 — By executors.

By owner of inheritance and trustees of a term. Lease by the Owner of the Inheritance and Trustees of a Term, reserving Rent to Trustees during the Term, and at its Expiration, to the owner of the Inheritance; Covenants by Lessee to pay Rent and Taxes, to repair, to paint, and to insure the Premises: Power to Lessors to enter and view State of Repair: Covenant by Lessee not to lease Premises as a Shop, and to leave Premises in Good Repair: Condition of Reentry on Non-payment of Rent: Covenant by Lessors for Quiet Enjoyment - - - - 131

For a further term. Lease for a further Term of Years, subject to the same Rent and Covenants contained in the Original Lease 135

Surrender. Surrender of a Lease for Years, where the Surrenderee has the Freehold; (with Variations for his having a Term) - - - - - - - - 138

## LETTER OF ATTORNEY.

General powers to manage real and personal property. Letter of Attorney, on a Person possessed of Real and Personal Property going abroad; with Powers to the Attornies to take Possession of Real Property, to Demise the same, and to seal and deliver Deeds, &c. for demising the Premises, and carrying Contracts into Execution; to sue for Rents, &c., and to enter upon Forfeitures and bring Ejectments; to Distrain; to fell Timber; to Repair and Rebuild; to raise Trees; to lay up Stone, &c. for another House; to pay Minister a Salary; to appoint Gamekeepers; to dispose of the Personalty; to pay Rents, &c.; to purchase Lands; to enter into Contracts for that Purpose; to commence and prosecute Actions; to appear to Actions against Principal; to replevy Goods; to cause Appearance to be made in a particular Action; to exhibit Bill in Equity for a particular Purpose; to

recover Debts; to settle Accounts; to pay Debts; to pay Sums for Childrens' Maintenance; to place out Money at Interest; and to perform all other necessary Acts: Power to the Attornies to examine each other's Accounts; (with Variations giving other and different Powers and Authorities) - 144

Letter of Attorney to collect and receive Debts in Scotland, with full Powers for that Purpose - 153 — To receive debts in Scotland.

Letter of Attorney to receive Debt from a Debtor resident in the West Indies, with the proper Forms under the 5 Geo. II. c. 7. - - - - - 155 — To receive a debt.

Letter of Attorney to receive a Legacy, with Powers to receive a Smaller Sum, to give a Bond to refund a Part of the Legacy, and to submit the Matter to Arbitration - - - - - - - 157 — To receive a legacy.

Letter of Attorney by Executors, to receive Stock in the American Funds belonging to the Testator - 159 — To receive American stock.

Letter of Attorney to receive Purchase Money, to give a Receipt for the same, and to execute Conveyance of Premises to Purchaser - - - - - 160 — To execute conveyance.

Letter of Attorney from Partner at Home to his Partner Abroad, giving full Powers for carrying on the Partnership Business - - - - - - 162 — From one partner to another.

Letter of Attorney to receive Annuity, with Power to Distrain upon the Lands on which it is charged 164 — To receive annuity.

Letter of Attorney to receive Money due on a Bond, and the Interest thereof - - - - - - 166 — To receive money due on bond.

Letter of Attorney to receive Distributive Share of an Intestate's Personal Estate; with all necessary Powers 168 — To receive distributive share of intestate's effects.

To take possession of real and personal estate. Letter of Attorney from Devisees and Executors, named in a Will, to Attornies, to take Possession and recover the Real and Personal Estate of the Testator in a Foreign Settlement or Colony - - 170

To receive rent. Letter of Attorney to receive Rent, and if necessary to distrain for the same - - - - 172

To receive freight. Letter of Attorney to receive the Freight of a Ship 174

Whereby attorney appoints another attorney. Letter of Attorney, whereby Attorney, by virtue of a Power contained in his original Appointment, delegates his Power to another Attorney - - 175

Revocation. Revocation of a Letter of Attorney - - 176

## LETTER OF CREDIT.

Letter of credit. Letter of Credit, whereby one Person agrees to guarantee the Repayment of such Sums as shall be advanced to another - - - - - - - 177

## LETTERS OF ADMINISTRATION.

Limited letters of administrators. Letters of Administration limited to an Outstanding Term 178

## LETTER OF LICENSE.

Letter of license. Letter of License from Creditors to Debtor - - 183

## LETTERS PATENT.

Letters patent for a new invention. Letters Patent granting the Property in a New Invention 185

Specification of a Patent - - - - - - 190 Specification of a patent.

A Charter and Letters Patent of Incorporation of a Benevolent Society - - - - - - 192 Patent and charter.

A Charter and Letters Patent, granting additional Powers to those granted by a former Charter - 196 Additional charter.

## LICENSE.

License by Patentee of the Benefits of a Patent - 198 By patentee.

License by Patentee to a Person to enjoy the Benefits of a Patent at a certain Place and its Neighbourhood 199 By patentee.

License from a Lord of a Manor to cut Timber - 202 To cut timber.

License by a Lord of a Manor to Lease - - 203 To lease.

## MANUMISSION.

Manumission of a Male Slave - - - - - 205 Manumission.

## MEMORIAL.

Memorial of Indentures of Lease and Release (with affidavit by Witnesses to the Deeds) - - 212 Of lease and release.

Memorial of an Assignment of Term to attend the inheritance (to be written under Memorial of Deeds of Lease and Release) - - - - - 213 Of assignment of term.

Memorial of a Bargain and Sale - - - 214 Of bargain and sale.

Memorial of a Mortgage in Fee, by Lease and Release 215 Of mortgage in fee.

Of mortgage for a term. Memorial of an Indenture of Mortgage for a Term of Years, with a Certificate of Satisfaction - 216

Of further charge. Memorial of a Deed of further Charge - - 217

Of lease. Memorial of a Lease - - - - - 218

Of assignment of lease. Memorial of an Assignment of a Lease - - 219

Of deed of covenant to levy a fine. Memorial of a Deed of Covenant to levy a Fine - 220

Of an appointment. Memorial of an Appointment - - - - 221

Of a deed-poll. Memorial of a Deed-Poll - - - - 222

Of a judgment. Memorial of a Judgment - - - - 222

Of a will. Memorial of a Will - - - - - 223

## MORTGAGES.

Memorandum of equitable deposit of deeds. Memorandum of Deposit of Title-Deeds belonging to a Public-House, left with Brewers, as a Security for Money owing, and for further advances - 273

Covenant to execute a mortgage. Deed of Covenant to execute a Mortgage, accompanying a deposit of Title-Deeds - - - - 275

Mortgage in fee. Simple form. Mortgage in Fee of a Freehold Estate in the Occupation of Tenants from Year to Year.—(Simple Form) 279

Mortgage in fee. Concise form. Mortgage in Fee.—(Very concise Form) - - 286

Further charge by deed indorsed. Deed of Charge for securing a further Sum of Pounds, and Interest (indorsed on the Mortgage) 289

Assignment of terms to at- Assignment of a Term of Years in Trust, to attend the

Inheritance of an Estate in Mortgage; and Surrender of Three other Terms in different Moieties of the same Estate, to the intent that the same may become Merged in the Fee - - - - - - 292 — tend a mortgage.

Appointment and Release in Fee to Trustees, for securing, by way of Mortgage, the Sum of Pounds, and Interest, with Power of Sale: Also Power of Leasing, and Provisions for accepting a less rate of Interest, and allowing the Money to remain on the Security for Seven Years, if the Interest should be regularly paid, and for Insurance against Damage by Fire - - - - - - - - - 301 — Appointment and release in fee, with power of sale, &c.

Assignment of Three several Terms, of Five hundred Years, One thousand Years, and Two thousand Years, in Trust to attend a Mortgage, and to be assigned as the Trustees of the Mortgage-Deed shall direct; And subject thereto, to wait upon the Inheritance - - - - - - - - - 321 — Assignment of three terms to attend the inheritance.

Appointment and Demise for a Term of Years for securing, by way of Mortgage, the retransfer of a Sum of Stock, with a Sum equal to the Dividends in the mean time - - - - - - - - 326 — Appointment and demise for securing stock and dividends.

Transfer of a Mortgage Debt, or Sum of pounds, and of the Securities for the same, to Trustees, in Trust to attend a New Mortgage;—and Release of an Annuity, and Surrender of a Term of Years 339 — Transfers of a mortgage, &c. in trust.

Deed of Covenant to Surrender Copyholds held of the Manor of , subject to a condition to be void on transfer of a sum of Stock, and payment in the meantime of a sum of Money equal to interest at 5*l.* per cent. per annum on the value of the Stock, and Appointment of an Attorney to make such Surrender 354 — Deed of covenant to surrender copyholds by way of mortgage.

Deed of covenant to accompany a surrender of copyholds by way of mortgage.

Deed of Covenant to Accompany a Conditional Surrender of Copyholds, whereby the Mortgagor covenants for Payment of the Money lent, with Interest, and for Title, and gives a Power of Sale in case of default. (Memorandum of a Conditional Surrender of Copyholds out of Court, and Forms of Warrants to enter up Satisfaction and vacate the Surrender) - 360

Surrender out of court.

Form of Memorandum of a conditional Surrender of Copyholds out of Court - - - - - 362

Receipt.

Form of Receipt indorsed - - - - - 363

Warrant to enter satisfaction.

Form of Warrant to enter Satisfaction on a Conditional Surrender of Copyholds - - - - 364

Acknowledgment of payment of mortgage.

Form of Acknowledgment of Payment of the Money and Interest secured by a Conditional Surrender, and Warrant to vacate such Surrender - - 364

Of leaseholds by assignment, special powers of sale, and leasing.

Assignment of Leaseholds, by way of Mortgage, where the Money secured is not to be paid off for five Years, unless the Mortgagor should give notice of his desire previously to pay in the same: Power of Sale, and special Power of Leasing, to Mortgagor and Mortgagee, before and after Default: Provision enabling the Mortgagee to pay the rent and perform the Covenants in the Lease, and Charge on the Premises of the Monies which should be advanced for that purpose, with Interest: Covenant for Payment, and usual Covenants for Title in Mortgages of Leaseholds - - - - - - 370

Demise of leaseholds and assignment of furniture, &c.

Mortgage of Leaseholds by Demise or Underlease, and Assignment of Furniture and other Effects on the Premises, and which had been previously Bargained and Sold, for Securing a Debt or Sum which was paid off out of the Mortgage-Money - - 383

Further Charge on Leasehold Premises, for securing a sum of Pounds, owing to the Mortgagee, and a sum of Pounds, now lent by him; with Provisions for Insurance against damage by Fire, and for permitting the Money secured to remain uncalled in for a period of five Years, in case the Interest should be paid half-yearly (Indorsed on the Mortgage-deed) - - - - - - 400 — Deed of further charge.

Conveyance of Freeholds and Covenant to surrender Copyholds, for securing, by way of Mortgage, a sum of Pounds, advanced by the Trustees of a Marriage Settlement, with Interest for the same, at 5*l.* per cent., where the Estate mortgaged was subject to certain Annuities and Portions payable to the Mortgagor's Mother and younger Brothers, who joined in the Security, for the purpose of giving to the Mortgagees Priority of Payment: the Trustees of the Term created for securing the Annuities and Portions assigning it, by direction of the Mother and Brothers, to a Trustee for the Mortgagees - 406 — Mortgage of freeholds and copyholds to trustees of a settlement.

Declaration of Trust of a Sum of Money secured by a Mortgage, where the Money lent was advanced by the Trustees of a Marriage Settlement, which was not indorsed on the Mortgage-Deed - - 427 — Declaration of trust of a sum of money lent on mortgage.

Deed of Covenant from a Mortgagor to a Mortgagee, to produce the Mortgagor's Marriage Settlement as Evidence that his Wife is barred from claiming her Dower in the Mortgaged Premises - - 431 — Covenant to produce mortgagor's marriage settlement.

Deed of Covenant from a Mortgagee to produce to the Mortgagor the Title-Deeds relating to the Estates in Mortgage - - - - - - - - 433 — Covenant from mortgagee to produce title-deeds to mortgagor.

Conveyance of an Estate by way of Mortgage to the use of Mortgagee for a Term of Years, subject to a — Limitation of a term to mortgagee, and the fee to trustees for sale.

Proviso for Cesser, on payment of the Principal and Interest at the time mentioned; with Remainder, to the use of Trustees in Fee, upon Trust to Sell, at the Mortgagee's request, in case of Default . 435

Mortgage under trusts of a term of years to raise portions. — Mortgage of an Undivided Share in a Settled Estate, by a surviving Trustee of a Term of Years, created for raising Portions, where one of the Children provided for was dead, and his Executors required his Portion to be raised - - - - - - 440

Bill of sale of a ship. — Mortgage, by Bill of Sale, of a Ship - - - 457

Assignment of a ship for securing a running account. — Assignment of a Ship, employed in the Coal Trade, to the Chief Proprietor of a Colliery, in Trust, for securing to himself, and the other Proprietors of the Colliery, all such Sums of Money as may be owing from the Mortgagor for Coals, &c., with Interest 475

To bankers, for securing a running account. — Assignment of Leasehold Premises to Trustees, for securing to Bankers the Balance of a running Account, with Interest on all Advances, at *5l.* per cent. from the time of making the same - - - - 480

Of a building lease for securing all sums to be advanced for buildings. — Assignment of a Leasehold Piece of Ground, with Buildings partly erected thereon, for securing by way of Mortgage all sums which should be advanced for completing the Buildings, not exceeding the sum of pounds and Interest. (Power of Sale, &c.) 493

By tenant in tail for securing a solicitor's bill, &c. — Mortgage in Fee by Tenant in Tail in Possession, for securing the Amount of his Solicitor's Bill, and a Sum of Money advanced at the Time of executing the Deed, with Interest. (Part of the Premises being derived under an Inclosure Act, and all of them being described in a Plan) - - - 502

Bond to accompany a mortgage. — Bond to accompany a Mortgage - - - - 514

Warrant of Attorney to accompany a Mortgage - 515 — Warrant of attorney to secure a sum lent on mortgage.

Warrant of Attorney by a Mortgagor, to confess a Judgment, in an Action of Ejectment for the Recovery of the Mortgaged Premises - - - - 518 — Warrant of attorney in ejectment.

Conveyance of an Estate in Jamaica, for securing to two Persons, as First Mortgagees, a sum of pounds and Interest, and to another Person, as Second Mortgagee, a sum of pounds and Interest; the Debt of the First Mortgagees to have Priority of Payment till it is reduced to the amount of the Debt of the Second Mortgagee, and then both Debts to be secured without any Preference; And, subject thereto, in Trust for the Mortgagor - - 522 — Of an estate in Jamaica.

Affidavit of Execution of a Mortgage of an Estate in Jamaica by a Mortgagor, by one of the attesting Witnesses to such Execution - - - 563 — Affidavit of execution.

Certificate of the Lord Mayor, of a Mortgagor having executed the Mortgage, and of an Affidavit of the Execution by one of the attesting Witnesses - 564 — Mayor's certificate of execution of a deed.

Conveyance, by way of Mortgage, by a Husband and Wife, of the Equity of Redemption of an Estate in Fee, mortgaged by the Wife's Father in his life-time 565 — Of an equity of redemption by husband and wife.

Appointment, by way of Mortgage, by Husband and Wife, of an Estate limited to such uses as they should jointly appoint, with Power of Sale. (Very concise Form.) - - - - - - - 573 — Appointment, by way of mortgage, of a moiety of an estate by husband and wife.

Assignment of a Policy of Assurance on the Life of the Mortgagor, for Securing, by way of Mortgage, the Sum of Pounds and Interest, with Power of — Of a life assurance policy.

Sale; and Covenant to pay the Premiums on the Policy during the continuance of the Security - 578

Mortgage of renewable leaseholds for lives.

Mortgage of Renewable Leaseholds for Lives - - 584

Notice to pay in mortgage debt.

Notice by a Mortgagor to a Mortgagee, of his Intention to pay in the Mortgage-Money - - - 591

Notice to sell, if debt be not paid.

Notice by a Mortgagee to a Mortgagor, of his Intention to proceed to a Sale of the mortgaged Premises, unless the Principal and Interest secured by the Mortgage are paid within six Months - 592

See titles TRANSFERS and TRUST-DEEDS.

# PRECEDENTS

IN

# CONVEYANCING.

## LEASES

(*Continued*).

OF RECTORY, AND OF TITHES.

LEASE *of* RECTORY AND TITHES (*a*), *by the* RECTOR *of a* PARISH; *Covenants by Lessee to Repair* CHANCEL, *and* INDEMNIFY *Lessor from any Charges for* DILAPIDATIONS *thereof.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [*lessor*] of, &c. rector of the parish of , of the one part, and [*lessee*] of, &c. of the other part;

Testatum.

WITNESSETH, that in consideration of the yearly rent, conditions, covenants, and agreements hereinafter reserved and contained on the part of the said [*lessee*], his executors, administrators, and assigns to be paid, kept, observed, and performed,

Demise.

HE the said [*lessor*] *Hath* granted, demised, and leased, and by these presents *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns,

Parcels.

ALL THAT the rectory of the parish church of , situate and being in the county of , with ALL and every the tithes of corn, grain, and hay, and other great or rectorial tithes and dues whatsoever growing, arising, renewing, and increasing, or which at any time during the term hereby granted, shall grow, arise, renew, and increase upon or out of the same; *And also* the tithes of wool, lamb, milk, honey, and all other tithes, dues, and duties which are paid, and usually

(*a*) As to leases of tithes, see 1 Byth. by Stewart, 65.

OF RECTORY, AND OF TITHES.

reckoned as small or vicarial tithes upon or within the said parish of , belonging to the said [*lessor*], as rector thereof, *Together* with, &c. (*general words*) (except and always reserved out of this present lease unto the said [*lessor*] and his successors, all and all manner of Easter offerings, and all offerings and duties commonly called fees for christenings, churchings, marriages, burials, and surplice fees of every kind); To HAVE AND TO HOLD the said tithes, tenths, and all and singular other the premises hereby demised, or intended so to be, with the appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the day of the date of these presents, unto the full end and term of years from thence next ensuing, and and fully to be complete and ended, in as full, ample, and beneficial a manner, to all intents and purposes whatsoever, and with the like powers, privileges, and authorities in all things (except as hereinbefore excepted), as he the said [*lessor*] might or would have had, holden, or enjoyed the same as rector of the said parish in case these presents had not been made; YIELDING (*b*) AND PAYING therefore yearly and every year during the continuance of the said term hereby granted, unto the said [*lessor*], and his successors, the rent or sum of pounds of lawful money of

Exception of church dues, &c.

Habendum.

Reddendum.

---

Rent may be reserved out of tithes.

(*b*) It is now quite clear, that rent can be reserved out of tithes, although they are incorporeal hereditaments, but they cannot be the subject of a distress; so that the security for the rent is merely by way of contract. *Dalston* v. *Reeve*, Ld. Raym. 77. *Dean and Chapter of Windsor* v. *Gower*, 2 Saund. 302. *Bally* v. *Wells*, 3 Wils. 25.

It should be mentioned, that all contracts for letting the house of residence, or buildings, garden, orchards, and appurtenances necessary to the convenient occupation thereof, belonging to any benefice, to which house any spiritual person is required by order of the bishop to proceed and reside therein, or which is assigned as a residence to any curate by the bishop, shall, on serving a copy of such order or assignment on the occupier thereof, be void, and a copy of such order, &c. shall, immediately on its issue, be transmitted to one of the churchwardens, or such other person as the bishop thinks fit, and be by him forthwith served on such occupier; and any person continuing to hold the same after the day appointed by such order for the residence therein of such spiritual person, shall forfeit 40*s.* for every day which

Great Britain and Ireland, by two equal half yearly payments, on the day of , and the day of in every year, without any deduction or abatement whatever out of the same, or any part thereof, for or by reason of any taxes, rates, or assessments whatsoever, whether now or hereafter to be charged, assessed, or imposed upon or payable in respect of the premises hereby demised, or any part thereof, by authority of parliament, or otherwise howsoever, the first payment thereof to be made on the day of next; AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid to the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by two equal half yearly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever, parliamentary or parochial, which now are, or hereafter shall, during the said term, be payable in respect of the said rectory and tithes, and other the premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also* that he the said [*lessee*], his executors, administrators, and assigns, or some or one of them, shall and will from time to time, and at all times during the continuance of the term hereby granted, at his and their own proper costs and charges, when and so often as need or occasion shall be or require, well and sufficiently repair and keep in repair the chancel of the said church of , and shall and will

OR RECTORY, AND OF TITHES.

Covenant by lessee to pay rent,

and repair chancel;

and indemnify lessor from any

---

he shall wilfully continue to hold the same, together with the costs incurred; and the spiritual person so directed to reside may apply to any justice or magistrate for a warrant for taking possession thereof, and possession may thereupon be taken at any time in the day time, by entering it by force, if necessary, without other proceeding by ejectment or otherwise. 57 Geo. III. c. 99. s. 32.

OF RECTORY, AND OF TITHES.

charges for dilapidations thereof.

save, defend, keep harmless and indemnified, the said [*lessor*], his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of, from, and against all actions, suits, costs, charges, damages, and expenses whatsoever, which he or they shall or may sustain or be put unto for or by reason or means of any dilapidations, or want or defect of repairs in or about the said premises, or any part thereof, during the continuance of the said term; AND the said [*lessee*] *Doth* hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term, grant, demise, underlet, assign, or set over, or otherwise by any act or deed procure or cause the said rectory and tithes, or other the premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be demised, underlet, assigned, or set over, unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his heirs and assigns, first had and obtained; AND the said [*lessor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may quietly and peaceably have, hold, occupy, possess, and enjoy the said rectory and tithes, and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*lessor*], his heirs or assigns, or any other person lawfully claiming or to claim by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement: PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being

Covenant not to assign without license of lessor.

Covenant by lessor for quiet enjoyment;

Power of entry if default shall be made in payment of rent for 21 days, or on non-performance of covenants.

lawfully demanded on the twenty-first or any subsequent day; or any or either of the covenants or agreements hereinbefore contained, on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then, and in either of such cases, it shall be lawful for the said [*lessor*], his heirs or assigns, into or upon the said rectory and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding. IN WITNESS, &c.

OF RECTORY, AND OF TITHES.

---

## UNDERLEASE *of the* TITHES *of a Farm and Lands to the Occupier thereof;* COVENANTS *by Lessee for the Payment of Rent and Taxes:* PROVISOES *for determining the Lease on Non-payment of Rent, and that no Change of Cultivation shall affect the Rent.*

OF TITHES.

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part: WHEREAS by virtue of an indenture bearing date the day of , the said [*lessor*] is the lessee or farmer of the great and small tithes of the parish of , for the term of years, under [A. B] of, &c. who is rector of the said parish; AND WHEREAS the said [*lessee*] is the tenant or occupier of the said messuage or farm, land, and premises hereinafter described, situate within the said parish; *And* the said [*lessor*], hath agreed to grant the great and small tithes payable in respect of the said messuage or farm, lands, and premises, to the said [*lessee*], upon the terms,

Parties.

Recital that lessor is lessee of the tithes for a term;

that lessee is the occupier of certain premises;

and agreement to grant tithes thereof.

OF TITHES.

and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the yearly rent, conditions, covenants, and agreements hereinafter reserved and contained, on the part of the said [*lessee*], his executors, administrators, and assigns, HE the said [*lessor*], *Hath* granted, demised, and leased, and by these presents *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns, ALL the great and small tithes whatsoever, yearly arising, increasing, growing, and renewing, and which from time to time during the term hereby granted, shall yearly arise, increase, grow, and renew, in, upon, from, and out of ALL THAT messuage or farm, &c. (*parcels*); *Together* with, &c. (*general words*); TO HAVE AND TO HOLD the said great and small tithes, and all and singular other the premises hereby granted and demised, with their and every of their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the day of last, for the term of years thence next ensuing; YIELDING AND PAYING therefore, yearly and every year during the said term hereby granted, the rent or sum of pounds, clear of all deductions whatsoever, the said rent to be paid and payable by equal quarterly payments, upon the day of , the day of , the day of , and the day of , in every year during the said term, the first payment thereof to be made on the day of next; *And* the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT with the said [*lessor*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, or assigns, shall or will from time to time during the said term hereby granted, pay, or cause to be paid, unto the said [*lessor*], his executors, administrators, or assigns, the said yearly rent or sum of pounds, according to the reservation hereinbefore made of the same, and the true intent and meaning of these presents; *And also* shall and will pay, bear, and discharge all taxes, rates, assessments, and impositions, now imposed or payable, or hereafter to be imposed or become payable, upon or in respect of the said tithes hereby granted, or any part thereof, and keep the

Testatum, whereby lessor demises tithes.

Habendum for ——— years.

Reddendum on the usual quarter days.

Covenant by lessee to pay rent,

and taxes,

said [*lessor*], his executors and administrators, effectually indemnified against the payment thereof; PROVIDED ALWAYS, and it is hereby expressly declared, that in case the yearly rent hereby reserved, or any part thereof, shall be in arrear for the space of forty days next after any of the days hereinbefore appointed for the payment thereof, and if in any such case, the said [*lessor*], his executors, administrators, or assigns, shall cause a notice in writing, under his or their hands, to be delivered to the said [*lessee*], his executors, administrators, and assigns, or to be left at his or their usual place or places of abode, thereby declaring the term hereby granted of the said tithes and premises to be at an end, then the demise hereby made shall cease and determine, anything hereinbefore contained to the contrary notwithstanding; PROVIDED ALWAYS, and it is hereby lastly agreed, that any change in the manner of cultivating the said lands and premises hereinbefore described, or any part thereof, shall not increase, diminish, or otherwise affect the rent hereby reserved, or any part thereof; AND the said [*lessor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said tithes and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever of, from, or by the said [*lessor*], his executors, administrators, or assigns, or any other person lawfully claiming, or to claim by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c.

Proviso that if rent due shall be in arrear, and lessor shall give notice, demise shall cease.

No change of cultivation to affect the rent.

Covenant by lessor for quiet enjoyment.

OF TITHES.

## UNDERLEASE *of* TITHES *by a Rector who holds under an Ecclesiastical Corporation, to the Occupier of a Farm, the Underlease being made with their Assent.*

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. clerk, of the first part, and [*lessee*] of, &c. of the second part: WHEREAS by an indenture bearing date the day of , and made, or expressed to be made, between the dean and chapter of , of the one part, and the said [*lessor*], of the other part; the said dean and chapter, for the considerations therein mentioned, did demise, grant, and to farm let to the said [*lessor*], ALL THAT the rectory and parsonage of [A.], situate, &c. and all glebe lands, tithes, pensions, portions, rights, and advantages whatsoever unto the said rectory or parsonage belonging, *To hold* unto the said [*lessor*], his executors, administrators, and assigns, from the day of , then last past, for the term of years, at and under the yearly rent of pounds, and the covenants and agreements therein expressed and contained, and amongst others, that neither he the said [*lessor*], his executors, administrators, nor assigns, nor any of them, should at any time thereafter during the said term, let, alien, sell, or assign, his or their or any of their estate, term, and interest of and in the said premises, or any part thereof, to any person or persons, without the special license and consent in writing of the said dean and chapter, or their successors, first had and obtained in writing under their common seal; AND WHEREAS the said [*lessee*] is seised of or well entitled, to him and his heirs, of or to the messuage, farm, and lands, situate and being in the said parish of [A.] hereinafter particularly described; *And* he the said [*lessee*], hath contracted

Parties.

Recital of lease, whereby dean and canons demise rectory and tithes to lessor for —— years;

that lessee is entitled to a messuage in the parish of ——;

and that he has

OF TITHES.

and agreed with the said [*lessor*] for the purchase of the rectorial tithes of the said messuage, farm, and lands, for all the term and estate of the said [*lessor*] therein under the said lease, at or for the price or sum of pounds, but under and subject to the rents and duties hereinafter reserved in that behalf: AND WHEREAS for carrying the said contract into effect, it hath been agreed, that the said [*lessor*] shall grant unto the said [*lessee*] an underlease of the said last mentioned tithes and premises, for the term of years, commencing from the day of last past, in the manner hereinafter mentioned; AND WHEREAS the said dean and chapter of , have on his application, by an instrument in writing bearing date on or about the day of instant, with their common seal affixed, given their special license and consent to him the said [*lessor*], to demise and let the said last mentioned tithes and premises unto the said [*lessee*], his executors, administrators, and assigns, for the said term of years: NOW THIS INDENTURE WITNESSETH, that in performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*lessee*] to the said [*lessor*] in hand well and truly paid, at or immediately before the execution of these presents, (the receipt of which sum of pounds the said [*lessor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and discharge the said [*lessee*], his heirs, executors, administrators, and assigns,) HE the said [*lessor*] *Hath* granted, bargained, sold, and demised, *And* by these presents *Doth* grant, bargain, sell, and demise unto the said [*lessee*], his executors, administrators, and assigns, ALL and all manner of tithes and tenths of corn, grain, and hay, and all other the tithes and tenths, oblations, obventions, and other spiritual dues whatsoever, to the said rectory or parsonage of [A.] belonging, and therewith granted and demised as aforesaid, and yearly arising, growing, or increasing out of or from, or to be yielded and paid in respect of ALL, &c. (*parcels*), *Together* with all and singular the profits, privileges, easements, advantages, and appurtenances whatsoever to the tithes, and other premises hereby demised, or intended so to be,

contracted with the lessor for the tithes thereof.

Agreement to grant underlease to lessor;

that the dean and canons have given their consent.

Testatum, whereby, in consideration of purchase-money,

lessor grants

the tithes.

General words.

OF TITHES.

or any part thereof belonging, or in anywise appertaining, or to or with the same, or any part thereof, now or heretofore demised, used, occupied, or enjoyed; TO HAVE AND TO HOLD the tithes or tenths, and all other the premises hereby demised, or intended so to be, and every part thereof, unto the said [*lessee*], his executors, administrators, and assigns, from the day of now last past, for and during, and unto the full end and term of years thenceforth, and fully to be complete and ended;

Habendum for ——— years.

Reddendum.

YIELDING AND PAYING, from and after the day of , yearly and every year during the said term hereby granted, (*Usual mode of reservation, see ante*, p. 6;) AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid to the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear from all taxes, charges, impositions, and deductions whatsoever; AND also shall and will well and truly pay and satisfy all taxes, charges, dues, and duties whatsoever, parliamentary or parochial, which now are or hereafter shall, during the said term, be payable for or in respect of the said tithes, and other the premises hereby demised, or intended so to be, whether the same be assessed on the landlord or tenant thereof; *And* the said [*lessor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said tithes, and other the premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or dis-

Covenant to pay rent,

and taxes.

Covenant by lessor for quiet enjoyment of lessee.

turbance whatsoever, of, from, or by the said [*lessor*], his heirs or assigns, or any other person lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c. OF TITHES.

---

OF MANSION HOUSE AND GROUNDS.

LEASE *of a* MANSION HOUSE *and* GROUNDS; COVENANTS *by the Lessee to* KEEP GARDENS *in Order; that he will not* CUT DOWN *the Fruit Trees; not* FELL TIMBER; *to keep Premises in* ORDER; *to* PLANT SHRUBS *at proper Seasons:* POWER *of determining Lease at the End of and Years of the Term;* COVENANT *by Lessor to* PAY TAXES, *and for* QUIET ENJOYMENT, (*with a* COVENANT *for* COMPLETING *the Mansion House, and* EXPENDING *a certain Sum thereupon*).

THIS INDENTURE, made, &c., BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part; WITNESSETH, that in consideration of the yearly rent hereby reserved, and of the covenants, conditions, and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be respectively paid, observed, and performed; HE, the said [*lessor*] *Hath* demised and leased, *And* by these presents *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns; ALL THAT messuage and dwelling-house, situate in the parish of , in the county of , and commonly called or known by the name of , and ALL THAT, &c. (*lands*), *Together* with the outbuildings, gardens, shrubberies, and pleasure grounds thereunto belonging; TO HAVE AND TO HOLD the said messuage or dwelling-house, and all and singular other the premises hereby demised, or intended so to be, with their

Parties.

Witnessing part.

Demise.

Parcels.

Habendum.

OF MANSION HOUSE AND GROUNDS.

appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, henceforth for and during the term of years, to be computed from the day of the date of these presents, and from thenceforth ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore, unto the said [*lessor*], his heirs and assigns, during the said term, the yearly rent of pounds of lawful money of Great Britain and Ireland, by two equal half yearly payments, on the day of , and the day of , in every year; *And* the said [*lessee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid unto the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by two equal half yearly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever; *And* also, that he the said [*lessee*], his executors, administrators, or assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or dwelling-house and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, waydraughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time during the said term hereby granted, keep the gardens and garden ground belonging to the said messuage or dwelling-house, well cropped and manured, and manage the same

Reddendum.

Covenants by lessee to pay rent,

and to repair,

Covenants by lessee to keep garden in repair,

OF MANSION HOUSE AND GROUNDS.

according to the most approved methods of gardening; *And that* he or they will not cut down or destroy any of the fruit trees, or any other trees now growing, or which shall at any time or times during the said term hereby granted, grow in the said gardens (except such trees as shall be decayed, or shall cease to be productive of fruit), and that he and they will carefully preserve the same trees, except as aforesaid, and cause the said fruit trees to be properly pruned at seasonable times of the year; *And that* he or they will plant in the place or stead of every decayed or unproductive fruit tree which shall be decayed or become unproductive during the said term, and which shall be cut down by him or them, a thriving tree of proper growth of the same sort of fruit; *And also*, that he the said [*lessee*], his executors, administrators, or assigns, will not at any time during the term hereby granted, fell, cut down, top, lop, or carry away any of the timber or other trees now growing or being, and which shall at any time or times during the said term, grow or be upon the other parts of the said demised premises, but will preserve the last mentioned trees, and all the shrubberies, underwood, and hedges, belonging to the said premises, from damage or injury, by cattle or otherwise, and will also keep the said pleasure grounds and ornamental plot of the said premises in good order, and will not use the same for any other purposes than those of pleasure and ornament, nor will commit or suffer to be committed on the said demised premises, any waste, spoil, or destruction whatsoever; *And also* shall and will, at the proper season of the year, plant a sufficient number of ornamental trees and shrubs on such parts of the said pleasure grounds as are set out for that purpose, and renew the same so often as occasion shall require; *And* the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term, grant, demise, underlet, assign, or set over, or otherwise, by any act or deed, procure or cause the said messuage or dwelling-house and premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest

and that he will not cut down the fruit trees;

and will plant fresh trees;

and will not fell timber;

and keep premises in order;

and will plant shrubs at proper seasons.

Covenant by lessee not to assign without license.

OF MANSION HOUSE AND GROUNDS.

and leave premises at the end of the term in repair.

therein, to be demised, underlet, assigned, or set over unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his heirs or assigns, first had and obtained; *And further* shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly leave, quit, surrender, and yield up unto the said [*lessor*], his heirs and assigns, together with all buildings, erections, and fixtures, now or hereafter to be built or erected therein or thereon, the said messuage or dwelling-house and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damage by fire, only excepted; PROVIDED ALWAYS,

Power for lessor to enter upon the premises twice in every year to view the state of repairs,

and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*lessor*], his heirs or assigns, with or without workmen, as to him or them shall seem fit, twice in every year during the said term, by giving three days' previous notice in writing of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage or dwelling-house and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*lessor*], his heirs and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments, then and there found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, and to give notice in writing, at or upon the said messuage or dwelling house, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same, and within six calendar months after such notice, or sooner if occasion shall require, he the said [*lessee*], his executors, administrators, or assigns, shall and will repair, amend, and cleanse the same, in all things, according to the true intent and meaning of these presents; PROVIDED ALWAYS,

and to give notice to lessee to repair,

Power for lessor to enter upon the premises, if default shall be made in payment of rent for 21

and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall, at any time or times during the said term, be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the

same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first or any subsequent day; or any or either of the covenants hereinbefore contained, on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then and in either of such cases, it shall be lawful for the said [*lessor*], his heirs or assigns, into or upon the said messuage or dwelling-house and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole, to enter, and the same to have again, repossess, and enjoy as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*lessor*], his heirs or assigns, at the expiration of the first or years of the said term of years, on giving notice in writing of such purpose and intent to the said [*lessee*], his executors, administrators, or assigns, at least calendar months before the expiration of such or years, to determine and make void these presents, and the said term hereby granted, any thing herein contained to the contrary thereof notwithstanding; AND the said [*lessor*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT and agree with the said [*lessee*], his executors, administrators, and assigns, that the said [*lessor*], his heirs, executors, administrators, or assigns, will discharge and pay all taxes, assessments, and other impositions whatsoever, which now are, or shall at any time or times hereafter, during the said term hereby granted, be taxed, charged, or imposed upon the said demised premises, or any part thereof, or upon the landlord or tenant in respect thereof, or will from time to time allow the said [*lessee*], his executors, administrators, and assigns, to deduct and retain the amount of such taxes, assessments, or imposi-

OF MANSION HOUSE AND GROUNDS.

days, or on nonperformance of any of the covenants.

Power of determining the lease at the end of the first —— and —— years.

Covenant by lessor to pay taxes,

OF MANSION HOUSE AND GROUNDS.

and for quiet enjoyment of lessee.

tions, out of the rent which shall have become payable by him or them, in respect of the same premises, by virtue of these presents; *And also*, that it shall be lawful for the said [*lessee*], his executors, administrators, and assigns, he and they paying the said yearly rents hereby reserved, and observing and performing the several covenants, conditions, and agreements, herein contained on his or their part to be respectively paid, observed, and performed, peaceably and quietly to hold, occupy, and enjoy the said messuage or dwelling-house and premises hereby demised, or intended so to be, and every part thereof, during the said term of years, without any eviction, interruption, or denial whatsoever, from or by the said [*lessor*], his heirs or assigns, or any other person or persons whomsoever. IN WITNESS, &c. (*a*).

---

(*a*) The following covenant may often be found useful in a lease of this nature:

Covenant to complete the house, and expend a certain sum thereupon.

"*And* the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, on or before the day of , at his and their own costs and charges, complete, finish, and render habitable the said messuage or dwelling-house and premises hereby demised, or intended so to be, with the appurtenances, and every part thereof, and thoroughly fit up the same with all necessary conveniences and comforts, and shall and will, in the completing and finishing such messuage or dwelling-house as aforesaid, lay out and expend the sum of pounds of, &c. at the least, and produce and shew the receipts for the same sum, or otherwise satisfy the said [*lessor*], his heirs or assigns, that such sum of pounds hath been so laid out and expended."

LEASE *of a* PIECE *of* LAND, ALLOTTED *under an* INCLOSURE ACT; *Covenants by Lessee to make all necessary* FENCES *and* HEDGES, *and keep them in* REPAIR; POWER *to Lessor to* VIEW STATE *of* REPAIR. OF ALLOTMENT UNDER INCLOSURE ACT.

THIS INDENTURE (*a*), made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part; WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and of the covenants and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be paid, observed, and performed, HE the said [*lessor*] *Hath* granted, demised, and leased, and by these presents *Doth* grant, demise, and lease, unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT piece or parcel of land, situate, lying, and being, &c. and which said piece or parcel of land or ground was formerly part of the common fields of , and was the land of , but which have been lately allotted unto the said [*lessor*] under or by virtue of the award of [A. B.] and [C. D.], commissioners named in, or appointed by, or in pursuance of an act of parliament passed in the year of, &c., entitled "An act for inclosing," &c. &c., *Together* with all the ways, paths, passages, waters, watercourses, privileges, advantages, easements, and appurtenances whatsoever, to the said piece or parcel of land or ground, or any part thereof, now belonging or in anywise appertaining, or to be therewith holden, used, occupied, or enjoyed, TO HAVE AND TO HOLD the said piece or parcel of ground, and all and singular other the premises hereby demised, or intended so to be, with their appurtenances, unto the

Parties. Testatum. Parcels. Habendum.

(*a*) As to the law on the subject of inclosure acts, see *post*, tit. PURCHASE DEEDS.

OF ALLOTMENT UNDER INCLOSURE ACT.

said [*lessee*], his executors, administrators, and assigns, from the date of these presents, for and during the term of years, to be thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year unto the said [*lessor*], his heirs and assigns, the rent or sum of pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, on the day of , the day of , the day of , and the day of in every year, free and clear of and from all manner of taxes, rates, assessments, deductions, and abatements whatsoever, whether parliamentary, parochial, or otherwise, the first quarterly payment thereof to be made on the day of next; AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, from time to time, and at all times during the said term, well and truly pay or cause to be paid to the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear from all taxes, charges, impositions, and deductions whatsoever; *And also* shall and will well and truly pay, or cause to be paid and satisfied, all taxes and charges, dues, and duties whatsoever, parliamentary or parochial, except the land tax, which now are, or hereafter shall during the said term be payable in respect of the said piece or parcel of ground and premises hereby demised, or intended so to be, whether the same be assessed on the landlord or tenant thereof; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will at his and their own costs and charges, well and duly make, execute, and complete, or cause and procure to be made, executed, and completed, at his and their own costs, charges, and expenses, all such fences, inclosures, matters, and things whatsoever, in, upon, or about the said piece or parcel of ground and premises, and in such space of time, and manner and form in all things, as in and by the said

Reddendum.

Covenant by lessee to pay rent,

and taxes;

to make all necessary fences and hedges;

recited act of parliament is or are required to be made and executed, by or on the part of the said [*lessor*], his heirs or assigns, in relation to or concerning the same, and according to the true intent and meaning of the said act; *And* shall and will during the said term hereby granted, at his and their own costs and charges, maintain and keep all and every the hedges, ditches, mounds, gates, stiles, and fences, of, in, or upon the said piece or parcel of ground and premises, in good and substantial repair; *And further*, that it shall and may be lawful for the said [*lessor*], his heirs or assigns, or his or their surveyor properly authorised, either alone or with workmen or others, at any time or times during the said term, at seasonable times in the day time, to enter into and upon the said piece or parcel of ground and premises, or any part thereof, for the purpose of viewing and examining the state and condition thereof, and of the fences and hedges thereto belonging, and that in case any defect or want of reparation shall be found or appear, he the said [*lessee*], his executors, administrators, and assigns, shall and will, upon notice thereof in writing, under the hand of the said [*lessor*], his heirs or assigns, being given to him or them, cause the same to be forthwith well, substantially, and properly repaired and amended in all things; AND the said [*lessor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said piece or parcel of land or ground, and other the premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatever, of, from, or by the said [*lessor*], his heirs or assigns, or any other person lawfully claiming, or to claim by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c.

OF ALLOTMENT UNDER INCLOSURE ACT.

and keep them in repair.

Power for lessor to enter and view state of repair,

Covenant by lessor for quiet enjoyment of lessee.

OF A MESSUAGE, UNDER A POWER.

## LEASE *of a* MESSUAGE *by Virtue of a* POWER *in a* WILL, *containing the usual Clauses.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part;

Recital of the will creating the power.

[WHEREAS [*testator*], did in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , and thereby (amongst other things) gave and devised the messuage or tenement, hereditaments, and premises hereinafter described, and intended to be hereby demised, with their appurtenances, *To the use* of the said [*lessor*] and his assigns, during his life, with a limitation to the use of [*trustees*] therein described, and their heirs, during the life of the said [*lessor*] and his assigns, by the usual ways and means to preserve the contingent remainders thereinafter limited, with divers remainders over; *And* in the said will now in recital, was contained a power to the said [*lessor*] and his assigns, during his life, by any indenture or indentures, either referring or not referring to such power, to be sealed and delivered by him or them in the presence of and attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, the said messuage or tenement, hereditaments, and premises hereinafter described, and intended to be hereby demised, with their appurtenances, to any person or persons, for any term or number of years, not exceeding twenty-one years, to take effect in possession, and not in reversion, or by way of future interest, so as there should be reserved in every such limitation or appointment, by way of demise or lease, the best or most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be limited or appointed by way of demise or lease, that could be reasonably had and gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature thereof,

OF A MESSUAGE, UNDER A POWER.

for such limitation or appointment, and so as the lessee therein named should thereby covenant for the due payment of the rent or rents thereby reserved, and so as there be contained in every such limitation or appointment by way of demise or lease, a clause in the nature of a condition of re-entry for non-payment of the rent thereby reserved by the space of thirty-one days next after the same shall become due, and so as the lessee therein named do execute a counterpart thereof, and be not by any clause exempted from punishment for committing of waste; AND WHEREAS the said [*lessee*] hath contracted and agreed with the said [*lessor*], for a lease of the said messuage or tenement, hereditaments, and premises hereinafter described, or intended to be hereby demised, with their appurtenances, for the term of years from the day of the date of these presents, at the yearly rent of pounds, payable as hereinafter is mentioned, and under and subject to the covenants and agreements hereinafter expressed and declared: NOW THIS INDENTURE] WITNESSETH, that [in pursuance and performance of the said agreement, and] in consideration of the rents and covenants hereinafter contained on the part of the said [*lessee*], his executors, administrators, or assigns, to be paid, observed, and performed, HE the said [*lessor*], pursuant to, and by force and virtue, and in exercise and execution of [the (*a*) power or authority to him for this purpose given or limited by the said hereinbefore recited will,] and of every or any other power or authority in anywise enabling him in this behalf, *Doth* by this present indenture, by him sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the sealing and delivering hereof, direct, limit, and appoint, and so far as he can or may grant, bargain, sell, and demise, unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or

Agreement for lease.

Testatum, whereby lessor demises

Parcels.

(*a*) This precedent may be shortened by omitting the recitals, and other parts in brackets, and saying:

"In execution of a power or authority to him for this purpose given or limited by the will of [A. B.], late of, &c. deceased, and of every other," &c.

OF A MESSUAGE, UNDER A POWER.

tenement, situate, &c. *Together* with all and singular the outhouses, buildings, coach-houses, stables, yards, cellars, areas, vaults, ancient and other lights, ways, paths, passages, drains, pipes, waters, watercourses, sewers, commodities, advantages, and appurtenances whatsoever, to the said messuage or tenement, hereditaments, and premises belonging, or in anywise appertaining; TO HAVE AND TO HOLD the said messuage or tenement, hereditaments, and all and singular other the premises hereby demised, or intended so to be, with their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the day of the date of these presents, for and during the term of years, to be thence next ensuing, and fully to be complete and ended, YIELDING AND PAYING therefore, yearly and every year during the said term, unto the said [*lessor*], his heirs and assigns, or such other person or persons who for the time being shall be entitled to the reversion or inheritance of the said premises, expectant on the determination of the said term, the clear yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, free from all rates, taxes, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon the said messuage or tenement, hereditaments, and premises hereby demised, or intended so to be, or any part thereof, the first quarterly payment thereof to be made on the day of now next ensuing; AND the said [*lessee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will during the continuance of the said term, well and truly pay, or cause to be paid to the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear from all taxes, charges, impositions, or deductions whatsoever; *And also* shall and will well and

Habendum.

Reddendum.

Covenant by lessee to pay rent,

and taxes;

OF A MESSUAGE, UNDER A POWER.

truly pay and satisfy all taxes and charges, dues and duties whatsoever, parliamentary or parochial, except the land tax, which now are, or hereafter shall, during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, ceilings, fences, floors, partitions, drains, sewers, gutters, way-draughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, *And also* all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will forthwith, at his and their own proper costs and charges, insure, or cause to be insured, the said messuage or tenement and premises hereby demised, or intended so to be, from or against loss or damage by fire, in some or one of the respectable offices in London or Westminster for insurance against fire, in the sum of pounds at the least, and shall and will continue the same so insured during the said term; *And also* shall and will, when thereunto required by the said [*lessor*], his heirs and assigns, produce and shew to him or them, the last receipt or receipts for the annual premium or duty payable for such insurance; AND it is hereby agreed and declared between and by the parties hereto, that if at any time or times during the said term, the said [*lessee*], his executors, administrators, or assigns, shall neglect or refuse to effect such insurance as aforesaid, or having effected such insurance, shall neglect or refuse to pay the premiums and duties for keeping the same on foot, required by the rules and regulations of the office or offices in which the same insurance shall be effected, then, and in

and repair,

and insure premises to the value of —*l.*

Agreement that if lessee shall not insure, lessor may do so, and recover the expenses from the lessee,

OF A MESSUAGE, UNDER A POWER.

such case, and so often as the same shall happen, it shall and may be lawful for the said [*lessor*], his heirs or assigns, to effect a proper insurance in any office or offices he or they shall think fit, or to pay the necessary premium or premiums, in the payment of which default shall have been made as aforesaid, and to charge and recover the costs and expenses of the same respectively, with interest for the same after the rate of five pounds for one hundred pounds, upon and from the said [*lessee*], his executors, administrators, and assigns, on the quarterly day hereinbefore mentioned, immediately succeeding any such payment or payments; *And* that in case the said messuage or tenement and premises, or any part thereof, shall at any time or times during the said term, happen to be burnt down or damaged by fire, in such case, and so often as the same shall happen, all and every such sum or sums of money as shall or may be recovered or received by the said [*lessee*], his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him or them in rebuilding or repairing the said messuage or tenement and premises hereby demised, or intended so to be, or such part or parts thereof as shall be burnt down, or destroyed, or damaged by fire as aforesaid; *And* that he shall not nor will, at any time during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatsoever, nor convert the said messuage or tenement into a shop or shops, warehouse or storehouses, or otherwise attempt to carry on any trade or business whatsoever, without the consent in writing of the said [*lessor*], his heirs and assigns, first had and obtained; And the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term hereby granted, grant, demise, underlet, assign, or set over, or otherwise by any act or deed procure or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate,

and lay out money recovered upon the premises.

Covenant not to carry on any trades, nor to convert premises into a shop.

Covenant not to assign without license of lessor,

term,] or interest therein, to be assigned, underlet, or set over, unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his heirs and assigns, first had and obtained; *And further*, shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly leave, quit, surrender, and yield up unto the said [*lessor*], his heirs or assigns, together with all buildings, erections, and fixtures, now or hereafter to be erected or built therein or thereon, the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damage by fire, only excepted; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*lessor*], his heirs or assigns, with or without workmen, as to him or them shall seem fit, twice in every year during the said term, by giving three days' previous notice in writing of such his or their intention, at seasonable times in the day, to enter into or upon the said messuage or tenement and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*lessor*], his heirs and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments, then and therein found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, to give notice in writing, at or upon the said messuage or tenement, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same within six calendar months, or sooner if occasion shall require, and he the said [*lessee*], his executors, administrators, or assigns, shall and will repair, amend, and cleanse the same in all things according to the true intent and meaning of these presents; PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall at any time or times during the said term be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due,

and leave the premises in repair.

Power for lessor to enter twice in every year upon the premises, to view the state of repair.

Proviso for re-entry on non-payment of rent for 21 days, or on non-performance of any of the covenants.

OF A MESSUAGE, UNDER A POWER.

according to the reservation thereof hereinbefore contained, the same being demanded on the twenty-first or any subsequent day; or any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then and in either of such cases it shall be lawful for the said [*lessor*], his heirs or assigns, into and upon the said messuage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy as of his and their former estate, as if this indenture had not been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding; (*Covenant by lessor for quiet enjoyment, as ante*, p. 19.) IN WITNESS, &c.

---

OF CHAMBERS BY TENANTS IN COMMON.

### LEASE *of* CHAMBERS *by Tenants in Common, with usual Clauses and Provisions.*

Parties.

THIS INDENTURE, made, &c. BETWEEN [*lessors*] of, &c. of the one part, and [*lessee*] of, &c. of the other part;

That lessors are seised as tenants in common, and have agreed to grant a lease.

WHEREAS the said [*lessors*] are seised of, or entitled in fee-simple to the chambers or apartments and hereditaments hereinafter mentioned, and intended to be hereby demised, in equal shares, as tenants in common, and they have agreed to grant to the said [*lessee*] a lease thereof, for

Testatum.

years, upon the terms and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and of the covenants and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be respectively paid, observed, and performed,

OF CHAMBERS BY TENANTS IN COMMON.

THEY the said [*lessors*], according to their respective shares and proportions, *Have*, and each of them *Hath* demised and leased, *And* by these presents *Do*, and each of them *Doth* demise and lease, unto the said [*lessee*], his executors, administrators, and assigns, ALL THOSE chambers or apartments and hereditaments, situate and being in a certain court called Court, in Lincoln's Inn, in the county of Middlesex, and being on the floor of the staircase of the said court, *Together* with all and singular cellars, areas, ancient and other lights, paths, passages, drains, sewers, pipes, waters, watercourses, and all and every other rights, privileges, easements, advantages, and appurtenances to the said chambers or apartments belonging or in anywise appertaining: TO HAVE AND TO HOLD the said chambers or apartments, hereditaments, and all and singular other the premises hereby demised, unto the said [*lessee*], his executors, administrators, and assigns, from the day of , for and during and unto the full end and term of years thence next ensuing; YIELDING AND PAYING (*a*) therefore, yearly and every year during the said term, unto the said [*lessors*], their heirs and assigns, the clear yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the day of , the

Parcels.

General words.

Habendum for —— years.

Reddendum.

---

(*a*) Tenants in common are seised by several titles; Litt. s. 311; Co. Litt. 195 b.; and, therefore, in real or mixed actions, they shall have several actions; but in personal actions they shall have one action jointly in all their names; Litt. s. 315. If tenants in common make a joint lease, reserving an entire rent, they may join in an action brought to recover the same; but if there be a separate reservation, there must be separate actions; *Powis* v. *Smith*, 5 B. & A. 851; 1 Dow. & Ry. 85. It will be better, therefore, to reserve rent jointly to the tenants in common, as they may then take their choice whether they will bring a joint or a several action.

As to the remedies of tenants in common for rent.

A tenant in common may also distrain separately for his share of the rent reserved, although his co-tenant has been possessed of the lease; *Snelgar* v. *Holston*, Cro. Jac. 611; *Whitley* v. *Roberts*, 1 M'Clell. & Yo. 107; and if the lessee pay the whole rent to one lessor tenant in common, after notice from the other, he will be liable to pay the share of the other over again; *Harrison* v. *Barnby*, 5 T. R. 246.

OF CHAMBERS BY TENANTS IN COMMON.

day of , the day of , and the day of in every year, free from all rates, taxes, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon or in respect of the premises hereby demised, or any part thereof, the first quarterly payment to be made on the day of now next ensuing; AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessors*], their heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid unto the said [*lessors*], their heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever; *And also* shall and will well and truly pay and satisfy all taxes and charges, dues and duties whatsoever, parliamentary or parochial, except the land tax, which now are or hereafter shall, during the said term, be payable in respect of the said messuage or tenement, hereditaments, and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, maintain, uphold, amend, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, waydraughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and as often as need shall be; AND shall and will in every fourth

Covenant by lessee to pay rent,

and taxes,

and to repair;

and to paint outerwork.

OF CHAMBERS BY TENANTS IN COMMON.

year of the said term hereby granted, at his own costs and charges, paint, or cause to be painted with two good coats of oil colour, all and every the outer doors, rails, window frames, and other the outside wood and iron work of the said messuage or tenement and premises; (*Covenant to insure the premises to the value of pounds, and lay out money recovered on premises, as ante*, p. 23; *Agreement that if lessee shall not insure, lessor may do so, and recover the expenses from lessee, as ante*, p. 23;) AND the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term, grant, demise, underlet, assign, or set over, or otherwise, by any act or deed procure or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate, term or interest therein, to be demised, assigned, underlet or set over, unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his heirs or assigns, first had and obtained; AND that he shall not nor will, at any time during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatsoever, nor convert the said messuage or tenement into a shop or shops, warehouses, or storehouses, or otherwise attempt to carry on any trade or business whatsoever, without the consent in writing of the said [*lessor*], his heirs or assigns, first had and obtained; *And further*, shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly leave, quit, surrender, and yield up unto the said [*lessor*], his heirs and assigns, together with all buildings, erections, and fixtures, now or hereafter to be built or erected therein or thereon, the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damage by fire only excepted; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these

Covenant by lessee not to assign without license of lessor.

Covenant not to carry on any trade,

and leave the premises in repair.

Power to lessor to enter upon premises twice

OF CHAMBERS BY TENANTS IN COMMON.

a year, to view state of repairs.

presents, that it shall be lawful for the said [*lessors*], their heirs or assigns, with or without workmen, as to him or them shall seem fit, twice in every year during the said term, by giving three days' previous notice in writing of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage or tenement and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*lessors*], their heirs and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments, then and therein found, and which ought to be done by the said [*lessee*], his executors, administrators, or assigns, to give notice in writing at or upon the same messuage or tenement, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same within the space of six calendar months after such notice, within which space of six calendar months, or sooner if occasion shall require, he the said [*lessee*], his executors, administrators, or assigns, shall and will repair, amend, and cleanse the same in all things according to the true intent and meaning of these presents: PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall, at any time or times during the said term, be in arrear or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first or any subsequent day; or any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then, and in either of the said cases, it shall be lawful for the said [*lessors*], their heirs or assigns, into or upon the said messuage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole, to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, there-

Power for lessor to enter, on nonpayment of rent, or non-performance of covenants.

out and from thence utterly to expel, put out, and remove; And the said [*lessors*] do hereby for themselves, their heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessee*], his heirs, executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants and agreements hereinbefore contained, shall and may quietly and peaceably have, hold, occupy, possess, and enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*lessors*], their heirs or assigns, or any other person lawfully claiming, or to claim by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c.

OF CHAMBERS BY TENANTS IN COMMON.

Covenant by lessors for quiet enjoyment of lessee.

---

LEASE *of* LANDS *situate in Ireland*, FOR THREE LIVES; *with Powers of Mining, Digging Marble, &c. and without Impeachment of Waste; Power of Re-entry on Nonpayment of Rent; Covenant by Lessee to pay Rent; Covenant by Lessor for* PERPETUAL RENEWAL *of the Lease; Covenant by Lessee* TO ACCEPT *the Renewed Lease; Covenant by Lessor for Quiet Enjoyment, and for Further Assurance.*

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of, &c. of the other part; WITNESSETH, that as well in pursuance and performance of the covenants, conditions, and agreements in this behalf, on the part of the said [*lessor*], his heirs and assigns, mentioned and contained in and by a certain indenture of release, bearing date the day of last, and made between the said [*lessee*], of

Parties.

Testatum, whereby, in pursuance of covenant contained in a certain indenture, lessor

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

the first part; [B. H.] of, &c. of the second part; [*lessor*], of the third part; [P. C.] and [T. M.], of the fourth part; and [A. N.] of the fifth part; as also for and in consideration of the yearly rent, covenants, clauses, provisions, and agreements hereinafter reserved and contained on the part of the said [*lessee*], his heirs, executors, administrators, and assigns, to be paid, kept, observed, and performed, HE the said [*lessor*] *Hath* demised, granted, set, and to farm let, and by these presents *Doth*, &c. unto the said [*lessee*] and his heirs, ALL, &c. (*parcels and general words*); *And also* all mines, minerals, and quarries of marble and freestone, coals, and all other royalties, of what nature or kind soever, with full power to the said [*lessee*], his heirs and assigns, during the continuance of the said term and estate hereby granted and demised, to commit waste on the said demised premises or any part thereof, without incurring any penalty or forfeiture for so doing; TO HAVE AND TO HOLD the said premises hereby demised, or intended so to be, unto the said [*lessee*], his heirs and assigns, *To the use* of him the said [*lessee*], his heirs and assigns, without impeachment of or for any manner of waste, and with full power and liberty to commit such waste, as if he or they had been actually seised in fee simple of and in the said demised premises, from the day of instant, for and during the natural lives of [M. N.], the said [*lessee*], and [C.] his wife, and for and during the life or lives of the longest liver or livers of them, and for and during the life and lives of such other person or persons, who by virtue of the covenant hereinafter contained, shall from time to time be hereunto for ever added, by the said [*lessee*], his heirs and assigns, YIELDING AND PAYING therefore and thereout, yearly and every year during the said term hereby demised, and all future renewals thereof, unto the said [*lessor*], his heirs and assigns, at and upon the Royal Exchange of the city of London, the yearly rent of pounds of lawful money of Great Britain and Ireland, at and upon the day of , and the day of in every year, by two equal and even portions, free and clear of and from, and without making any deduction or abatement thereout, or out of

demises

Parcels, and all mines and quarries,

with power to lessor to commit waste.

Habendum to lessor for three lives, with the same powers as if he were seised in fee-simple.

Reddendum.

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

any part thereof, for or on account of any taxes, subsidies, or assessments, chimney or hearth money, church, parish, and ministers' dues, quit rents, crown rents, the exchange or remittance of money from Ireland to England, country charges, impositions and payments, or any other matter, cause, or thing whatsoever, ordinary or extraordinary, already taxed, charged, or assessed, or at any time hereafter to be taxed, charged, or assessed on the said premises hereby demised and granted, or on any part thereof, or on the said [*lessee*] and [*lessor*], or either of them, or their heirs, executors, administrators, or assigns, in respect of the said premises, or any of them, or the said yearly rent hereby reserved, or any part thereof, by authority of parliament, or otherwise howsoever, or for or in respect of any matter, cause, or thing whatsoever; the first payment of the said yearly rent of pounds hereby reserved, to be made on the day of next ensuing the date of these presents: PROVIDED ALWAYS, and these presents are upon this express condition nevertheless, that if it shall happen that the said yearly rent of pounds hereby reserved, or any part thereof, shall be behind and unpaid for the space of five months and twenty-one days next after any of the said days when the same ought to be paid as aforesaid, then, and from time to time, and so often as it shall so happen, it shall be lawful for the said [*lessor*], his heirs and assigns, and every or any of them, into or upon the said demised premises, or any part or parts thereof in the name of the whole, to re-enter, and the same to have again, retain, re-possess, and enjoy, as of his and their first and former estate; and then and in such case the said demise and grant so hereby made, shall, from the time of such re-entry, cease, determine, and be absolutely void to all intents and purposes whatsoever, anything herein contained to the contrary notwithstanding; AND the said [*lessee*] doth hereby for himself, his heirs and assigns, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his heirs, executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, unto the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds hereby reserved and made

Power of re-entry on non-payment of rent.

Covenant by lessee to pay rent.

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

Covenant by lessor for perpetual renewal of the lease.

payable, without making any deduction or abatement whatsoever thereout, or out of any part thereof, on any account or pretence whatsoever, on the days, in the manner, and at the place hereinbefore limited and appointed for the payment thereof as aforesaid; AND the said [*lessor*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*lessee*], his heirs and assigns, in manner following, (that is to say); that upon the death of any person or persons for whose life or lives the said premises are hereby demised and granted, and upon the death of any person or persons who shall at any time or times be nominated and added hereunto by the said [*lessor*], his heirs and assigns, in the place or stead of the person so dying, he the said [*lessor*], his heirs and assigns, shall and will, within twelve calendar months, to be computed from the date of the person or persons so dying, at the request, costs, and charges of the said [*lessee*], his heirs and assigns, by indorsement on these presents and the counterpart thereof, or by some deed, label, or parchment in writing, to be affixed thereto, or by some separate deed or writing, at the election of the said [*lessee*], his heirs and assigns, (but whereof there shall be a part or counterpart executed by the said [*lessee*], his heirs and assigns, sent to or left with the said [*lessor*], his heirs or assigns,) add and insert the life or lives of such other persons or person who shall from time to time be nominated by the said [*lessee*], his heirs or assigns, (so as there be not more than three lives in being at one and the same time,) in the place or stead of the person or persons so dying, and shall and will demise and grant all and singular the premises (subject to the same yearly rent, reservations, covenants, provisions, and agreements as are hereby reserved and herein contained, as well the present covenant as all others,) unto the said [*lessee*], his heirs and assigns, for and during the lives and life then in being, and for such other life or lives as shall for ever be nominated by the said [*lessee*], his heirs and assigns, he and they respectively first paying unto the said [*lessor*], his heirs and assigns, the sum of ten shillings of lawful money of Great Britain and Ireland, by way of fine, for every life respectively that shall so

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

die, over and above all arrears of the said yearly rent hereby reserved that shall be then due; AND the said [*lessee*] doth hereby for himself, his heirs and assigns, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his heirs and assigns, shall and will from time to time, and at all times for ever hereafter, as often as any of the lives hereinbefore named, or any life or lives which shall be nominated in any renewed lease or leases, shall happen to drop, or the person or persons nominated, or to be nominated, shall depart this life, accept of and take such renewed lease or leases of the same premises to him the said [*lessee*], his heirs and assigns, for such term and estate, and under such rents, and subject to such powers, provisoes, stipulations, covenants, and agreements as are hereinbefore mentioned, as well the present as all others herein contained, and shall and will sign and seal, and, as his and their act and deed, or acts and deeds, deliver, or otherwise well and sufficiently execute, a counterpart or counterparts of all such renewed leases; AND the said [*lessor*] doth hereby for himself, his heirs and assigns, COVENANT, promise, and agree with and to the said [*lessee*], his heirs and assigns, that he the said [*lessee*], his heirs and assigns, well and truly paying, performing, and observing all and every the rents, covenants, and agreements herein mentioned and contained, on his and their part to be paid, observed, and performed, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance, of, from, or by the said [*lessor*], his heirs and assigns, or any other person lawfully claiming or to claim by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement; *And further*, that he the said [*lessor*], his heirs and assigns, and all and every other person or persons whomsoever, having or claiming, or who shall or may hereafter have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, in, to, or out of the said premises hereby granted and demised, or intended so

Covenant by lessee to accept the renewed lease.

Covenant by lessor for quiet enjoyment,

and for further assurance.

FOR THREE LIVES, WITH COVENANT FOR PERPETUAL RENEWAL.

to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said [*lessor*], his heirs or assigns, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges of the said [*lessee*], his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, devices, conveyances, and assurances in the law whatsoever, for the further and better granting and demising the said premises hereby granted and demised, or intended so to be, unto the said [*lessee*], his heirs and assigns, for and during the lives of the said [M. N.], [*lessee*], and [C.] his wife, and the lives and life of the longest livers or liver of them, and for and during the natural lives or life of such other persons and person as shall from time to time for ever be nominated by the said [*lessee*], his heirs and assigns, as by the said [*lessee*], his heirs and assigns, or his or their counsel in the law, shall be reasonably devised or advised and required, so as no such further assurance or assurances contain or imply any further or other covenant or warranty than against the person or persons who shall be required to make or execute the same, and his, her, or their heirs, executors, or administrators' acts and deeds, and so as the party or parties who shall be required to make such assurance or assurances be not compelled or compellable for the making or executing the same, to go or travel from his, her, or their usual place or places of abode. IN WITNESS, &c.

## LEASE *by* MORTGAGEE *and* MORTGAGOR, *of a House and the Appurtenances, for a Term of Years, with usual Clauses:* POWER *to Mortgagor to Distrain.*

BY MORTGAGEE AND MORTGAGOR.

THIS INDENTURE, made, &c. BETWEEN [*mortgagee*] of, &c. of the first part; [*mortgagor*] of, &c. of the second part; (*a*) and [*lessee*] of, &c. of the third part: WHEREAS by indentures of lease and release, bearing date, &c. and made, or expressed to be made, between the said [*mortgagor*] of the one part, and the said [*mortgagee*] of the other part, the messuage or tenement and premises hereinafter described, and intended to be hereby demised, with their appurtenances, were (for the considerations in the said indenture of release mentioned) conveyed by the said [*mortgagor*] unto the said [*mortgagee*], his heirs and assigns for ever; *But* subject, nevertheless, to a proviso or condition in the same indenture of release contained, for the redemption of the said premises as therein mentioned; AND WHEREAS the said [*lessee*] hath contracted and agreed with the said [*mortgagor*], for a lease of the said messuage or tenement and premises hereinafter described, and intended to be hereby demised, for the term of years, at the yearly rent of pounds, payable as hereinafter is mentioned, and under and subject to the covenants and agreements hereinafter contained; AND WHEREAS the said [*mortgagee*] hath consented and agreed to join in such demise to the said [*lessee*]: NOW THIS INDENTURE WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and the covenants and agreements hereinafter contained on the

Parties.

Recites indentures of mortgage.

Agreement for lease.

Agreement by mortgagee to join.

Testatum.

(*a*) It is very usual to insert a power in the mortgage-deed to enable the mortgagor to lease; but where there is no such power, both the mortgagor and mortgagee must concur in it. See *ante*, Vol. IV p. 400.

BY MORTGAGEE AND MORTGAGOR.

part of the said [*lessee*], his executors, administrators, and assigns, to be respectively paid, observed, and performed, HE the said [*mortgagee*], (at the request and by the direction of the said [*mortgagor*], testified by his being a party to, and sealing and delivering these presents,) *Hath* bargained, sold, and demised, and by these presents *Doth*, &c. *And* he the said [*mortgagor*] *Hath* granted, bargained, sold, and demised, and by these presents *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or tenement, situate, &c. *Together* with all and singular outhouses, buildings, coach-houses, barns, stables, dove-cotes, yards, gardens, cellars, areas, ancient and other lights, paths, passages, drains, sewers, pipes, waters, watercourses, and all and every other rights, privileges, easements, advantages, and appurtenances to the said messuage or tenement and premises belonging, or in anywise appertaining; TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised, or intended so to be, and every part thereof, with their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, for the term of years, to be computed from the day of the date of these presents, and from thenceforth ensuing, and fully to be complete and ended; YIELDING AND PAYING, yearly and every year during the said term, unto the said [*mortgagor*], his heirs and assigns, the clear yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the day of , the day of , the day of , and the day of in every year, free from all rates, taxes, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, the first quarterly payment to be made on the day of now next ensuing; *And* the said [*lessee*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagor*], his heirs, and assigns, that he the said [*lessee*], his executors, administrators, and

Parcels.

Habendum for —— years.

Reddendum.

Covenant by lessee to pay rent,

assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid, unto the said [*mortgagor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever; *And also* shall and will well and truly pay and satisfy all taxes and charges, dues and duties, except the land tax, which now are, or hereafter shall, during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will, from time to time, and at all times, during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, way-draughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will forthwith, at his and their own proper costs and charges, insure, or cause to be insured, the said messuage or tenement and premises hereby demised, or intended so to be, from or against loss or damage by fire, in some or one of the respectable offices in London or Westminster for insurance against fire, in the sum of pounds at the least, and shall and will continue the same so insured during the said term; *And also* shall and will, when thereunto required by the said [*lessor*], his heirs and assigns, produce and shew to him and them the last receipt or receipts for the annual premium or duty payable for such insurance; And it is hereby agreed and declared be-

BY MORTGAGEE AND MORTGAGOR.

and taxes;

and will repair the premises;

and to insure premises to the value of —*l.*

Agreement that if lessee shall

BY MORTGAGEE AND MORTGAGOR.

tween and by the parties hereto, that if at any time or times during the said term, the said [*lessee*], his executors, administrators, or assigns, shall neglect or refuse to pay the premiums or duties for keeping the same on foot, required by the rules or regulations of the office or offices in which the same insurance shall be effected, then and in such case, and so often as the same shall happen, it shall and may be lawful to and for the said [*mortgagor*], his heirs and assigns, to effect a proper insurance in such office or offices as he or they shall think fit, or to pay the necessary premiums in the payment of which default shall have been made as aforesaid, and to charge and recover the costs and expenses of the same respectively, with interest for the same, after the rate of five pounds for one hundred pounds, upon and from the said [*lessee*], his executors, administrators, and assigns, on the quarter day hereinbefore mentioned immediately succeeding such payment as aforesaid; *And* that he shall not nor will, at any time during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatsoever, nor convert the said messuage or tenement into a shop or shops, warehouse or storehouse, or otherwise attempt to carry on any trade or business whatsoever; And the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*mortgagor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term, grant, demise, underlet, assign, or set over, or otherwise, by any act or deed, procure or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, demised, assigned, or set over unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his heirs and assigns, first had and obtained; *And further,* shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly leave, quit, surrender, and yield up unto the said [*mortgagor*], his heirs and assigns, together with all buildings, erections, and fixtures

not insure, it shall be lawful for mortgagor so to do, and to recover the expenses from the lessee.

and will not convert premises into a shop.

Covenant by lessee not to assign without license.

and quit the premises at the end of the term.

now or hereafter to be built or erected therein or thereon, the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damages by fire, only excepted: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*mortgagor*], his heirs and assigns, with or without workmen, as to him or them shall seem fit, twice in every year during the said term, by giving three days' previous notice in writing of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage or tenement and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*mortgagor*], his heirs and assigns, and of all decays, defaults, and want of reparations, cleansings, and amendments then and therein found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, to give notice in writing at or upon the same messuage or tenement, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same within the space of six calendar months after such notice; within which space of six calendar months, or sooner if occasion shall require, he the said [*lessee*], his executors, administrators, and assigns, shall and will repair, amend, and cleanse the same in all things, according to the true intent and meaning of these presents: PROVIDED ALWAYS (*b*), and it is hereby agreed and declared between and by the parties to these presents, that if, at any time or times hereafter, the said yearly rent or sum of pounds, or any part thereof, shall be unpaid by the space of twenty-one days after the respective days or times whereon the same ought to be paid as aforesaid, then and in such case, and so often as the same shall happen (although no lawful demand shall

BY MORTGAGEE AND MORTGAGOR.

Power to lesse to enter upon premises twice a year to view state of repair,

and to give notice to lessee to repair.

Power to mortgagor to distrain for the rent reserved.

(*b*) The reversion of the legal estate being in the mortgagee, an express power must be inserted to enable the mortgagor to distrain.

Power of distress.

BY MORTGAGEE AND MORTGAGOR.

have been made thereof), it shall be lawful for the said [*mortgagor*], his heirs and assigns, to enter into and distrain upon the said messuage or tenement and premises hereby demised, for the said yearly rent, or so much thereof as shall then be in arrear; *And* the distress and distresses then and there made to take, lead, carry away, and impound, and in pound to detain and keep, and in due time afterwards to sell and dispose of, or otherwise to act therein according to law, to the intent, that by the ways and means aforesaid the said [*mortgagor*], his heirs or assigns, shall and may be fully paid and satisfied the arrears of the said rent, and also the costs, charges, and expenses which shall be sustained or incurred in consequence of any such distress or distresses: PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall at any time or times during the said term, be in arrear and remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first or any subsequent day, or if any or either of the covenants and agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, *Then* and in either of such cases, it shall be lawful for the said [*mortgagor*], his heirs or assigns, into or upon the said messuage or tenement and premises hereby demised, or intended so to be, to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding; *And* the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall

Power for mortgagor to enter upon premises if default shall be made in payment of rent for twenty-one days, or on non-performance of covenants.

Covenant by lessee for quiet enjoyment.

and may, quietly and peaceably have, hold, occupy, possess, and enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagee*], his heirs or assigns, or the said [*mortgagor*], his heirs or assigns, or any other person lawfully claiming or to claim, by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c.

BY MORTGAGEE AND MORTGAGOR.

---

## LEASE *by the* COMMITTEE *of a Lunatic and the* LUNATIC, *for Years.*

BY COMMITTEE OF LUNATIC.

THIS INDENTURE, made the day of , BETWEEN [*committee*] of, &c. committee of the estate of [*lunatic*], of, &c. a lunatic, of the first part; the said [*lunatic*] of, &c. of the second part; and [*lessee*] of, &c. of the third part; WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and of the conditions, covenants, and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be paid and performed, HE the said [*committee*], as such committee of the estate of the said [*lunatic*], by virtue of an order of the Right Honourable John Singleton Lord Lyndhurst, Baron Lyndhurst, of Lyndhurst, in the county of Southampton, Lord High Chancellor of Great Britain, bearing date on or about the day of , made under and by virtue of an act of parliament passed in the first year of the reign of his present majesty King William the Fourth, entituled, "An Act for consolidating and amending the laws relating to property belonging to infants, femes covert, idiots, lunatics, and persons of unsound mind," *Hath*, with the approbation of , Esquire, one of the masters of the said Court of Chancery, to whom the matter of the said lunacy stands re-

Parties. Testatum. Demise.

BY COMMITTEE OF LUNATIC.

ferred, as testified by (*a*) his signing his initials in the margin of the first skins, and his name in the margin of the last skin of these presents, demised and leased, and by these presents *Doth* demise and lease unto the said [*lessee*], his executors, administrators, and assigns,

Habendum.

ALL THAT, &c. (*parcels, and general words*); TO HAVE AND TO HOLD the said premises hereby demised unto the said [*lessee*], his executors, administrators, and assigns, from the day of , 18 , for and during the term of years, to commence from the day of thence next ensuing, and fully to be complete and ended;

Reddendum.

YIELDING AND PAYING, &c. (*as ante*, p. 2);

Covenant to pay rent,

*And* the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lunatic*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times, during the continuance of the said term, pay, or cause to be paid, to the said [*lunatic*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever;

and taxes;

*And also* shall and will well and truly pay and satisfy all taxes and charges, dues and duties whatsoever, whether parliamentary or parochial, except the land-tax, which now are or hereafter shall, during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant

---

(*a*) Or it may be,

Approval of master.

"as testified by a memorandum under his hand, as written in the margin of these presents."

And the memorandum may be as follows:

"I approve and allow this indenture of lease, as contained in this and the preceding skins of parchment, as witness my hand this day of ."

[*Signature of master.*]

thereof; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, way-draughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term shall be made, when, where, and so often as need shall be; (*Covenant to insure premises in the sum of pounds, and lay out money recovered upon the premises, as* ante, Vol. IV. p. 458. *Agreement that if lessee shall not insure, committee may do so, and recover expenses from the lessee, as* ante, Vol. IV. p. 459); *And* the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree with and to the said [*lunatic*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term, grant, demise, underlet, assign, or set over, or otherwise, by any act or deed, procure or cause the said premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, or set over, unto any person or persons whomsoever, without the consent in writing of the said [*lunatic*], his heirs and assigns, first had or obtained; *And* that he shall not nor will, at any time during the said term hereby granted, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatsoever, nor convert the said messuage or tenement into a shop or shops, warehouse or storehouse, or otherwise attempt to carry on any trade or business whatsoever, without the consent of the said [*lunatic*], his heirs and assigns, first had and obtained: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties

BY COMMITTEE OF LUNATIC.

and to repair.

Covenant by lessee not to assign without the consent of committee.

Covenant not to carry on any trade.

Power to committee to enter twice a year to

BY COMMITTEE OF LUNATIC.

to these presents, that it shall be lawful to and for the said [*lunatic*], his heirs or assigns, with or without workmen, as to him or them shall seem fit, twice in every year of the said term, upon giving three days notice in writing of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage or tenement hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*lunatic*], his heirs and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments then and therein found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, to give notice in writing at or upon the same messuage or tenement, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same, and within the space of six calendar months after such notice, or sooner if occasion shall require, he the said [*lessee*], his executors, administrators, and assigns, shall repair, amend, and cleanse the same in all things, according to the true intent and meaning of these presents: PROVIDED ALWAYS (*a*), and it is hereby agreed, that if the said rent hereby reserved, or any part thereof, shall at any

view state of repair,

and to give notice to lessee to repair.

Power for lessor to enter on pre-

---

Where a tenant holds over after notice, remedy under the 4 Geo. 2, c. 28.

(*a*) If a tenant for life, lives, or years, shall hold over after the determination of his term, and demand made, and notice in writing by his or their landlords or lessors, or the person or persons to whom the remainder or reversion shall belong, his or their agents lawfully authorised, he shall pay to the persons so kept out of possession, their executors, &c. double the yearly value of the premises; 4 Geo. II. c. 28, s. 1.

This statute has been held not to apply to a weekly tenancy; *Lloyd* v. *Rosbee*, 2 Camp. 453; nor does it extend to cases in which a tenant maintains possession *bonâ fide*, or upon any firm ground of defence, as a treaty between the landlord and tenant for a further term; *Anon.* cit. 5 Esp. 215, 216; and see *Wright* v. *Smith*, 5 Esp. 203.

A notice is necessary in all cases in which the landlord would avail himself of the statute; *Cobb* v. *Stokes*, 8 East, 358; and the notice will include the demand; so that it will be sufficient to prove a service of the notice; *Wilkinson* v. *Colley*, Burr. 2694.

time or times, during the said term, be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first, or

BY COMMITTEE OF LUNATIC.

mises on non-payment of rent for twenty-one days, or on non-performance of any of the covenants.

---

The notice ought regularly to be given before the expiration of the term, and the landlord will then be entitled to recover double value, as from the time at which the term expired; *Cutting* v. *Derby*, Bl. Rep. 1075. It may, however, be given after the expiration; and if the landlord have done no act to acknowledge the continuance of the tenancy, he will be entitled to double value, as from the time of the notice or demand; but if the rent were before reserved quarterly, and such demand be made in the middle of a quarter, the landlord cannot recover single rent for the antecedent quarter of such quarter; *Cobb* v. *Stokes*, *ubi supra*. Where notice to quit is given to the tenant, a *feme sole*, and she afterwards marries, the landlord may maintain debt for double value against the husband, without serving another notice upon him, *Lake* v. *Smith*, 1 N. R. 174.

Who will be an agent under the statute.

A person appointed by the court of Chancery to receive the rents and profits of an estate, is an agent lawfully authorized within the meaning of the statute. And therefore, where a notice had been given by a receiver so appointed to receive the rents of an estate bequeathed in trust for infant children, it was held sufficient to enable the trustee and executor to recover double value against the tenant who held over after such notice, *Wilkinson* v. *Colley*, Burr. 2694. But the administrator of an executor cannot sue for double the value of lands held over, after notice to quit under the demise from the testator, without taking out administration *de bonis non*, even though the tenant may have attorned to him. *Tingrey* v. *Brown*, 1 B. and P. 310.

Lessor does not waive his right by bringing an ejectment.

The landlord does not waive his right to sue for double value by bringing an ejectment against the tenant. The two remedies are perfectly independent of each other; and therefore, although the lessor obtain possession of the premises demised by his ejectment, this does not affect his right to sue for the double value of the premises during the time for which the tenant held over, between the period of the expiration of the notice, and the time when the possession was recovered, *Soulsby* v. *Neving*, 9 East, 310. If, however, the landlord, after the expiration of his notice, receive the single rent from his tenant, it is a question for the jury whether the notice is not thereby waived, and the tenancy re-established; in which case the landlord's right to sue for double value is gone. *Doe* dem. *Cheny* v. *Batten*, Cowp. 243; *Ryal* v.

BY COMMITTEE OF LUNATIC.

any subsequent day; or if any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then, and in either of the said cases, it shall be lawful for the said [*lunatic*], his heirs or assigns, into or upon the said mes-

---

*Rich*, 10 East, 48. And on the other hand, if he recover for the double value from the middle of a quarter, he cannot recover his single rent for the antecedent fraction of such quarter. *Cobb* v. *Stokes*, 8 East, 362.

Where tenant holds over after notice by himself, he will be liable for double rent. Remedy, under the 11 Geo. II. c. 19.

By the statute 11 Geo. II. cap. 19. s. 18. reciting "whereas great inconveniences have happened and may happen to landlords whose tenants have power to determine their leases by giving notice to quit the premises by them holden, and yet refusing to deliver the possession when the landlord hath agreed with another tenant for the same," it is enacted, "that from and after the 24th day of June, 1738, in case any tenant or tenants shall give notice of his, her, or their intention to quit the premises, by him, her, or them holden, at the time mentioned in such notice; and shall not accordingly deliver up possession thereof at the time in such notice contained; then the said tenants or tenant, his, her, or their executors or administrators, shall from, thenceforth pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she, or they should otherwise have paid; to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid."

What action tenant may maintain.

As the statute directs the double rent to be recovered in the same manner as the single rent, the landlord may maintain either debt, or, in case of a parol demise, assumpsit; or he may distrain. *Timmins* v. *Rawlinson*, Burr. 1603.

What leases are within the statute.

A lease by parol is a holding within this statute, *Timmins* v. *Rawlinson*, *ubi sup.* And a parol notice to quit by a tenant, is sufficient to make him liable for double rent in case he hold over, *ibid.* But, to bring the tenant within the statute, his notice must be direct and positive; for where a tenant from year to year gave his landlord notice that he would quit upon a contingency, (viz. as soon as he could find another situation), and he did afterwards get another situation, but neglected to quit the premises, Lord Ellenborough, C. J. ruled that the notice was too vague, and that the case did not come within the statute. *Farrance* v. *Elkington*, 2 Campb. 591.

To what tenants the statute applies.

And the statute applies to those cases only, in which the tenant has the power of determining his tenancy by a notice, and in which he

suage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if these presents had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns,

BY COMMITTEE OF LUNATIC.

---

actually does give a valid notice for that purpose. Therefore where a tenant from year to year gave a parol notice to his landlord, less than six months before the expiration of the current year, and the landlord accepted and assented to the notice, it was held, that though the tenant held over after the expiration of the time mentioned in the notice, the landlord was not entitled to distrain for double rent. *Johnstone* v. *Huddlestone*, 4 B. and C. 922. 7 Dow. and Ry. 411.

Difference between the statutes.

The chief difference between these two statutes is, that in the case of the former the notice (which must be in writing), proceeds from the landlord; in the case of the latter, (where the notice may be by parol,) it is the act of the tenant; and that the one imposes double value by way of *penalty*, and not as *rent*; whilst the other still treats the party as tenant, and recognizes him by that name, which the other statute does not. This distinction is pointed out by Lord Ellenborough, in his opinion in *Soulsby* v. *Neving*, that the landlord's having recovered in ejectment was no bar to his afterwards suing for the double *value*; his lordship observing, "that there might be some incongruity in applying the remedy for double *rent*, after the remedy by ejectment, which treats the party in possession as a trespasser." 9 East, 314.

When the landlord suffers the lessee to remain in possession, and receives rent.

Where the landlord suffers the tenant to remain in possession after the expiration of the tenancy, and receives rent from him, a new tenancy from year to year will be thereby established, *Bishop* v. *Howard*, 2 B. & C. 100. In this case, provided no new agreement be entered into, the law will presume in the silence of the parties, that the tenant holds the premises subject to all such covenants contained in the original lease as apply to his present situation. Where, therefore, there has been in the lease covenants for a particular mode of husbandry, and after the expiration of the lease the tenant holds over and pays rent, the landlord may compel him to perform such covenants in the same manner as if they were still expressly agreed upon between them. *Roe* dem. *Jordan* v. *Ward*, 1 H. Bl. 99. And the tenant's liability will be continued notwithstanding an undertaking to pay a larger rent. Accordingly where premises had been demised by a certain indenture for a term of years, and the lessee covenanted to keep the premises in repair, and likewise to insure them against fire; and upon the expiration of the term agreed with the heir of the lessor, to continue tenant

BY COMMITTEE OF LUNATIC.

and all tenants and occupiers of the same premises thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding; AND the said [*committee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his execu-

Covenant by committee for quiet enjoyment of lessee.

---

to him, paying a larger rent than had been reserved by the lease, nothing appearing as to any stipulations with respect to the covenants, and the premises were accidentally burnt down; Lord Ellenborough, C. J., held that the tenant was bound to rebuild, and that the advance of rent made no difference, the terms of the old lease being incorporated with the new contract. *Digby* v. *Atkinson*, 4 Camp. 275.

And where a tenant held under an agreement for three years at 45*l.* a year, which expired at Midsummer, and at the expiration of his tenancy, did not yield up possession, nor did his landlord take any immediate steps to compel him so to do, but at Michaelmas following gave him notice to quit at Lady-day, or pay a rent of 50*l.* the year, and the tenant continued in, but refused to pay any more than 45*l.* rent; it was ruled, that under the circumstances the tenant must be taken to have acquiesced in the new proposal, and was bound to pay the 50*l.*; and the court of Common Pleas refused to disturb the verdict. *Roberts* v. *Hayward*, 3 C. & P. 432. Comyn's Land. and Ten. by Chilton, 355.

1 Geo. IV. c. 87.

Besides his remedies under these statutes, the landlord has now a summary mode of recovering possession from tenants holding over after notice to quit; for by stat. 1 Geo. IV. c. 87, after reciting that the laws heretofore made for preventing the losses to which landlords are exposed by the unlawful holding over of lands and tenements by tenants or persons claiming under them, after the expiration or legal determination of their terms or interests, have been found by experience to be insufficient, it is enacted, "That where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing, any lands, tenements, or hereditaments, for any term or number of years certain, or from year to year, shall have expired or been determined, either by landlord or tenant, by regular notice to quit, and such tenant, or person claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon, or left at the dwelling house or usual place of abode of such tenant or person, and the landlord shall thereupon proceed by action of ejectment for the recovery of possession, it shall be lawful for him, at the foot of the declaration, to address a notice to such tenant or person, requiring him to appear in the court in which the action shall have been commenced,

Landlords bringing ejectments, may give notice to tenants to appear in term, and then, on production of lease or agreement, to move on affidavit for a rule *nisi* on the tenant, to enter into certain undertakings and give certain bail.

tors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may quietly and peaceably have, hold, occupy, possess, and

BY COMMITTEE OF LUNATIC.

---

on the first day of the term then next following; or if the action shall be brought in Wales, or the counties palatine of Chester, Lancaster, or Durham respectively, then on the first day of the next session or assizes, or at the court day or other usual appearance to process then next following, (as the case may be,) there to be made defendant, and to find such bail, if ordered by the court, and for such purposes, as are hereinafter next specified; and upon the appearance of the party on the day prescribed, or on nonappearance, upon making the usual affidavit of service of the declaration and notice, it shall be lawful for the landlord, producing the lease or agreement, or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, to move the court for a rule for such tenant or person to shew cause, within a time to be fixed by the court on a consideration of the situation of the premises, why such tenant or person upon being admitted defendant, besides entering into the common rule, and giving the common undertaking, should not undertake, in case a verdict should pass for the plaintiff, to give the plaintiff a judgment, to be entered up against the real defendant, of the term next preceding the time of trial; or if the action shall be brought in Wales, or in the counties palatine respectively, then of the session, assizes, or court day, (as the case may be,) at which the trial shall be had; and also why he should not enter into a recognizance, by himself and two sufficient sureties, in a reasonable sum, conditioned to pay the costs and damages which shall be recovered by the plaintiff in the action; and it shall be lawful for the court upon cause shown, or upon affidavit of the service of the rule in case no cause shall be shown, to make the same absolute in whole or in part, and to order such tenant or person, within a time to be fixed, upon a consideration of the circumstances, to give such undertakings, and find such bail, with such conditions, and in such manner, as shall be specified in the said rule, or such part of the same so made absolute; and in case the party shall neglect or refuse so to do, and shall lay no ground to induce the court to enlarge the time for obeying the same, then upon affidavit of the service of such order,

On rule made absolute, if tenant shall not conform, judgment to be for the plaintiff.

BY COMMITTEE OF LUNATIC.

enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*committee*], his heirs or assigns, or any other person

---

an absolute rule shall be made for entering up judgment for the plaintiff.

Sec. 2. On trial of any ejectment between landlord and tenant, consent rule to be evidence of lease, entry, and ouster, if defendant make default, and the jury to give damages for mesne profits down to the verdict, or to a day specified therein.

2. "And it is further enacted, that wherever hereafter it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant or his attorney has been served with due notice of trial, the defendant shall not be nonsuited for default of the defendant's appearance, or of confession of lease, entry, and ouster; and the judge before whom such cause shall come on to be tried shall, whether the defendant shall appear upon such trial or not, permit the plaintiff on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the declaration, to go into evidence of the mesne profits thereof, which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein; and the jury on trial finding for the plaintiff, shall, in such case, give their verdict for the whole matter, both as to the recovery of the whole or any part of the premises, and also as to the amount of damages to be paid for such mesne profits: Provided always, that nothing hereinbefore contained shall be construed to bar such landlord from bringing an action of trespass for the mesne profits which shall accrue from the verdict or the day so specified therein, down to the day of the delivery of possession of the premises recovered in ejectment.

Sec. 3. On trials after undertakings given and trials found, judge may stay the execution till fifth day of next term absolutely, &c. or on tenant's finding security.

3. "And it is further enacted, that in all cases in which such undertaking shall have been given and such security found as aforesaid, if upon a trial the verdict shall pass for the plaintiff, but it shall appear to the judge before whom the same shall have been had, that the finding of the jury was contrary to the evidence, or that the damages given were excessive, it shall be lawful for the judge to order the execution to be stayed absolutely till the fifth day of the term then next following, or till the next session, assizes, or court day, (as the case may be,) which order the judge shall in all other cases make upon the requisition of the defendant, unless he shall forthwith undertake to find, and on condition that within four days of the day of trial he shall actually find security by the recognizance of himself and two sufficient sureties, in such reasonable sum as the judge shall direct, conditioned not to commit any waste, or act in the nature of waste, or other wilful damage, and not to sell or carry any standing crops, hay, straw, or manure,

lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c. (*b*). BY COMMITTEE OF LUNATIC.

---

produced or made (if any,) upon the premises, and which may happen to be thereupon from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment, or the same be set aside, as the case may be; Provided always, that the recognizance last above mentioned shall immediately stand discharged and be of no effect, in case a writ of error shall be brought upon such judgment, and the plaintiff upon such writ shall be bound in two sufficient sureties unto the defendant in the same, in such sum, and with such condition, as may be conformable to the provisions respectively made for staying execution, on bringing writs of error upon judgments in actions in ejectment, by an act passed in England in the sixteenth and seventeenth years of the reign of King Charles the second, and by an act passed in Ireland in the sixteenth and seventeenth years of the reign of the same king, which acts are respectively entituled 'An act to prevent arrests of judgment, and superseding executions.'

Bail in error to discharge such security.

16 and 17 Car. 2, c. 8.

16 & 17 Car. 2. c. 12.

4. "And be it further enacted, that all recognizances and securities entered into pursuant to the provisions of this act, may and shall be taken respectively in such manner, and by and before such persons, as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the court in which any such action of ejectment shall be commenced; and that the officer of the same court with whom recognizances of bail are filed, shall file such recognizances and securities, for which respectively the sum of 2*s*. 6*d*. and no more shall be paid; but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises, or any part thereof, shall actually have been delivered to the landlord.

Sec. 4. Recognizances to be taken as other recognizances of bail; limitations of actions thereon.

5. "And be it further enacted, that it shall not be lawful for the defendant to remove any action of ejectment commenced by a landlord under the provisions of this act, from any of the courts of great session in Wales, to be tried in an English county, unless such court of great session shall be of opinion that the same ought to be so removed, upon special application to the court for that purpose.

Sec. 5. Removal of actions of ejectment from Great Sessions in Wales.

6. "And be it further enacted, that where the landlord shall elect to

Sec. 6. In what

---

(*b*) This lease should be executed, first, by the committee in his own name, and then by him in the lunatic's name, and lastly by the lessee. Execution.

BY HUSBAND AND WIFE.

## LEASE *by* HUSBAND AND WIFE, *of Lands belonging to the* WIFE.

Parties.

THIS INDENTURE, made, &c. BETWEEN [*husband*] of, &c. and [*wife*] his wife, of the one part, and [*lessee*] of, &c. of the other part; WHEREAS the said [*husband*] and [*wife*] his wife are seised of, or entitled in right of the said [*wife*] to the messuage or dwelling-house and hereditaments hereinafter mentioned, for an estate of inheritance in fee simple, and they have contracted with the said [*lessee*] to grant him a lease thereof for the term, and subject to the covenants and agreements hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and of the covenants, conditions, and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be paid and performed, THEY the said [*husband*] and [*wife*] his wife, *Have*, and each of them *Hath* demised and leased, *And* by these presents *Do*, and each of them *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or dwelling house, situate, &c. *Together* with all and singular the outhouses, buildings, coach-houses, barns, stables, dovecotes, yards, gardens, cellars, areas, ancient and other lights, paths, passages, drains, sewers, pipes, waters, watercourses, and all and every other rights, privileges,

Recital that husband and wife are seised in fee, and have agreed to grant a lease to lessee.

Testatum.

Demise.

Parcels.

---

cases double costs.

proceed in ejectment under the provisions hereinbefore contained, and the tenant shall have found bail, as ordered by the court, then if the landlord upon the trial of the cause shall be nonsuited, or a verdict pass against him on the merits of the case, there shall be a judgment against him of double costs.

Sec 7. Proviso for former remedies.

7. "Provided always, that nothing in this act contained, shall be construed to prejudice any right of action or remedy which landlords already possess in any of the cases hereinbefore provided for.

Sec. 8. Act not to extend to Scotland.

8. "And be it enacted, that this act shall extend to all parts of the united kingdom of Great Britain and Ireland, except Scotland."

easements, advantages, and appurtenances, to the said messuage or dwelling house belonging or in anywise appertaining; To HAVE AND TO HOLD the said messuage or dwelling house, hereditaments, and all and singular other the premises hereby demised, or intended so to be, with their and every of their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, henceforth for and during the term of years, to commence from the day of now next ensuing, and fully to be complete and ended: YIELDING AND PAYING (*a*) therefore yearly and every year during the said term, unto the said [*husband*] and [*wife*] his wife, and the heirs of the said [*wife*], the yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, free from all taxes, rates, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon the said messuage or dwelling house, hereditaments, and premises hereby demised, or intended so to be, or any part thereof; the first quarterly payment thereof to be made on the day of next ensuing, *And* the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree, with and to the said [*husband*] and [*wife*] his wife, and the heirs and assigns of the said [*wife*], that he the said [*lessee*], his heirs, executors, administrators, and

BY HUSBAND AND WIFE.

Habendum for ——— years.

Reddendum.

Covenants by lessee to pay rent,

---

(*a*) In reserving rent in leases by husband and wife, the rent should be reserved to the husband and to the wife, and to the heirs of the wife.

Reservation of rent.

It has lately been decided, that where there was an agreement between a vendor and a purchaser, that the purchaser should pay to vendor at the rate of 100*l.* per annum, from taking possession until the conveyance of the premises was executed, in equal half-yearly payments; Lord *Tenterden* (C. J.) was of opinion, that the relation of landlord and tenant, at a fixed rent of 100*l.* per annum, payable half-yearly, to commence from the time of taking possession of the premises, was created between the vendor and purchaser. *Saunders* v. *Musgrave*, 6 B. & C. 524.

BY HUSBAND AND WIFE.

assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay or cause to be paid unto the said [*husband*] and [*wife*], and the heirs and assigns of the said [*wife*], the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of and from all taxes, charges, impositions, and deductions whatsoever; *And also* shall and will well and truly pay and satisfy all taxes and charges, dues and duties whatsoever, parliamentary or parochial, except the land tax, which now are or hereafter shall during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be assessed on the landlord or tenant thereof;

and taxes;

and to repair;

*And also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or dwelling house and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, waydraughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will forthwith, at his and their own proper costs and charges, insure or cause to be insured, the said messuage or tenement and premises hereby demised, or intended so to be, from or against loss or damage by fire, in some or one of the respectable offices in London or Westminster for insurance against fire, in the sum of pounds at the least, and shall and will continue the same so insured during the said term, and also shall and will, when thereunto required by the said [*husband*] and [*wife*], and the heirs and assigns of the said [*wife*], produce and shew to him, her,

to insure premises in the value of —*l.*

and them, the last receipt or receipts for the annual premium and duty payable for such insurance; AND it is hereby agreed and declared between and by the parties hereto, that if at any time or times during the said term, the said [*lessee*], his executors, administrators, or assigns, shall neglect or refuse to effect such insurance as aforesaid, or having effected such insurance, shall neglect to pay the premiums and duties for keeping the same on foot, required by the rules and regulations of the office or offices in which the same insurance shall be effected, then and in such case, and so often as the same shall happen, it shall and may be lawful for the said [*husband*] and [*wife*] his wife, and the heirs and assigns of the said [*wife*], to effect a proper insurance in any office or offices he, she, or they shall think fit, or to pay the necessary premium or premiums in the payment of which default shall have been made as aforesaid, and to charge and recover the costs and expenses of the same respectively, with interest for the same after the rate of five pounds for one hundred pounds, upon and from the said [*lessee*], his executors, administrators, and assigns, on the quarterly day immediately succeeding any such payment or payments; AND the said [*lessee*] doth hereby for himself, his executors, administrators, and assigns, COVENANT, promise, and agree, with and to the said [*husband*] and [*wife*], and the heirs and assigns of the said [*wife*], that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will at any time during the said term, carry on, or permit or suffer to be carried on within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatsoever, nor convert the said messuage or tenement into a shop or shops, warehouse, or storehouse, or otherwise attempt to carry on any trade or business whatsoever, without the consent in writing of the said [*husband*] and [*wife*] his wife, and the heirs and assigns of the said [*wife*], first had and obtained: *And* that he shall not nor will, during the said term, grant, demise, underlet, assign or set over, or otherwise, by any act or deed, procure, or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein,

BY HUSBAND AND WIFE.

Agreement that if lessee shall not insure, lessors may do so, and recover expenses from lessee.

Covenant not to carry on any trades.

Covenant by lessee not to assign without license.

BY HUSBAND AND WIFE.

to be assigned or set over unto any person or persons whomsoever, without the consent in writing of the said [*husband*] and [*wife*] his wife, and the heirs and assigns of the said [*wife*], first had and obtained: PROVIDED ALWAYS, *and it is hereby agreed*, that if the rent hereby reserved, or any part thereof, shall, at any time or times during the said term, be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first or any subsequent day; or if any or either of the covenants or agreements hereinbefore contained, on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then, and in either of such cases, it shall be lawful for the said [*husband*] and [*wife*] his wife, and the heirs and assigns of the said [*wife*], into and upon the said messuage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing hereinbefore contained to the contrary notwithstanding; *And* the said [*husband*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may quietly and peaceably have, hold, occupy, possess, and enjoy the said messuage or tenement, and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*husband*] and [*wife*] his wife, their heirs or assigns, or any other person lawfully claiming, or to claim by, from, or

Power for lessors to enter upon the premises, if rent shall be in arrear twenty-one days, or on non-performance of covenants.

Covenant by lessor for quiet enjoyment of lessee.

under him, her, them, or any of them, or by, from, or under his, her, their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c. BY HUSBAND AND WIFE.

---

LEASE *of* COAL MINES *to Two Lessees as Tenants in Common; Description of Parcels by a Reference to Plan;* POWER *to build and rebuild Houses, &c., and for the Purpose of building the same, to dig for Stones, &c.; Reservation of Right of Way to Lessor, and Power of Entry to view State of Premises; Reservation of a yearly Rent, payable yearly; Covenants by Lessee for the Payment of the Rent and Taxes; and to fence Pits; and do as little Injury as possible to the Surface of the Closes; not to injure the Houses by undermining the Foundations, and not to dig Stone except for the Purposes aforesaid; to give Notice to Lessor on ceasing to work any Pit, and permit Lessor to work for Iron therefrom; and to fill up all other Pits; and to remove all Roads made by him; and repair all Hedges; and remove Rubbish; and surrender Premises at the End of the Term; and permit Lessor, his Servants and Agents, to enter and view the State thereof.* AGREEMENT *that Lessee may* PURCHASE UTENSILS *at the End of the Term.* AGREEMENT *that if any Injury shall be done to the Premises, Lessee shall pay the Damage; the Amount to be ascertained by Arbitration.* AGREEMENT *that when all the Coals shall be exhausted, Term shall cease.* PROVISO *that if Lessee shall be desirous of having a further Lease, Lessor will execute a fresh Lease thereof.* OF COAL MINES

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*lessees*] of, &c. of the other part; WITNESSETH, that in consideration Parties.

OF COAL MINES.

Testatum. of the yearly rents, covenants, and agreements, hereinafter reserved and contained on the part of the said [*lessees*], their heirs, executors, administrators, and assigns, to be paid, observed, and performed, HE the said [*lessor*], *Hath* granted, demised, and leased, and by these presents *Doth*, &c. unto the said [*lessees*], their executors, administrators, and assigns, (*a*) ALL THAT bed, mine, or seam of coal,

Parcels.

---

VARIATIONS.

(*a*) Another description of mines of coal is as follows:

All mines, "All and all manner of mines, beds, lymphs, and veins of coal, ironstone, and other minerals, and the ores thereof respectively, which have been, are, or hereafter shall be discovered or opened, under, within, or about the manor of , lands and hereditaments, situate and being in the county of , with the appurtenances thereunto belonging, or every or any of them, *Together* with full and free liberty, power, and authority to and for the said [*lessee*], his executors, administrators, and assigns, and his agents, servants, and workmen, with or without horses, waggons, carts, or other carriages, from time to time and at all times hereafter, to enter into and upon the said manor of , lands, hereditaments, and premises, or any of them, or any part thereof, or to dig and sink such and so many shafts as shall be proper for getting all such coal, iron, ironstone, and other minerals, or the ores thereof respectively, and to stack and coke, or deposit the said coal, iron, ironstone, and other minerals, or the ores thereof respectively, when raised, on the land contiguous to such pits or shafts, until the same can be conveniently removed, and to erect any furnace or furnaces, engine or engines, for working, getting, or laying dry such coal, iron, ironstone, and other minerals, or any of them, or the ores thereof respectively, and to make ditches, drains, sloughs, or dams where necessary for carrying on and working the said coal, iron, ironstone, and other mineral works, and to use for foot-people, horses, waggons, and other carriages, all necessary and convenient roads for carrying off and selling the said coal, coke, iron, ironstone, and other minerals, or the ores thereof respectively; *And* all other privileges which shall be necessary, requisite, or appertaining for or

with liberty to enter upon the lands,

and sink shafts, and to use all necessary ways.

called the , lying and being in and underneath those three closes of land, situate, &c. [*describe the parcels*]; *And also* so much and such part or parts (if any), of the said bed or seam of coal, underneath the way or road which intersects the said closes, and underneath the waste or common in front of the said closes, next the said road or way, as is, or are, the property of the said [*lessor*], or as he is entitled to work, and which said closes of lands are described and delineated in the map and plan drawn in the margin of these presents; *And also* full and free liberty, license, power and authority, within the limits of the said bed or seam of coal hereby demised, to dig, sink, work, drive, and make such mines, pits, shafts, trenches, grooves, soughs, drifts, and water-gates, as they the said [*lessees*], their executors, administrators, or assigns, shall think proper for the procuring of any coal, in or from the said bed and seam of coal hereby demised, or any part thereof, and for avoiding and carrying off waters and foul air therefrom; *And also* to make use of such ground-room, heap-room, and pit-room, as shall be necessary for laying, from time to time, the coals which shall be got out of such mines or pits, or the stone, gravel, earth, and other refuse or rubbish, which shall from time to time be brought to the surface in the course of working the said bed and seam of coal hereby demised; *And also* to take, lead, and carry away with carts, waggons, and other carriages, all the coal raised and got out of the said mines, through, over, and along all, or any part of the said several closes of land and waste, the nearest and most convenient way or ways to any place or places where the same shall be delivered; *And also* in and upon the said closes of land and waste, to make, fix, and place any roads, waggon-ways, railroads, tramroads, or bridges, as occasion shall require; *And also* in and upon the same closes of land and waste, to make, set up, and build, and to remove and pull down, and again, on the same or any other part or parts of the same closes, to erect and rebuild all

OF COAL MINES.

Reference to plan.

With liberty to dig mines;

and to have heap room;

and to carry away coal;

to make railroads, &c.

Power to build and rebuild houses, &c.

---

to the finding, discovering, raising or working, procuring, or carrying away the said coal, iron, ironstone, and other minerals, and the ores thereof respectively."

OF COAL MINES.

such fire and other engines, houses, and stables, hovels, lodges, ovens, cabins, sheds, walls, and other erections, as shall from time to time be necessary or convenient for working all or any of the said beds and seams of coal hereby demised, or for getting or procuring coal therein or therefrom, or for converting the same into cinders, or for laying up and stacking any such coal or cinders, or for more effectually exercising all or any of the liberties, powers, privileges, and authorities hereinbefore granted; *And also*, for the purpose of making any such roads, bridges, engine-houses, stables, hovels, lodges, ovens, cabins, sheds, walls, and other erections as aforesaid, and for no other purpose whatsoever, to dig and take any stone, clay, earth, or other materials, which is or are under the said closes of land, or any of them, or any part or parts thereof; *Together* with the use of all waters and water-courses, arising and running within the limits of the beds and seams of coal hereby demised, with liberty to direct and turn such waters and water-courses, and to cut any bats or channels for conducting or conveying the same in, through, or over any part or parts of the lands lying within the limits of the said bed and seam of coal hereby demised, for the purpose of more effectually exercising and enjoying the liberties, powers, privileges, and authorities hereby granted; excepting always, and reserving unto the said [*lessor*], his heirs and assigns, or other the tenant or tenants, or occupier or occupiers for the time being, of the said several closes hereinbefore described, his and their workmen and servants, free liberty and authority, with horses, cattle, carts, waggons, and other carriages, to pass and go along and across the said roads, waggonways and bridges, which may be constructed on the said closes and waste hereinbefore described, at such times as they or he shall think proper for any purpose whatsoever, doing no injury nor obstruction to the property or works of the said [*lessees*], their executors, administrators, and assigns, within the limits of the said bed and seam of coal hereby demised, or of the said closes or waste hereinbefore described; *And also* excepting and reserving unto the said [*lessor*], his heirs and assigns, and his or their stewards, agents, workmen and servants, free liberty and authority, at all convenient times, to enter

and for the purpose of building the same, to dig for stones,

with the use of all water-courses.

Reservation of right of way to lessor;

and power of entry to view state of premises.

upon the said demised premises, and to view the state thereof, and to inspect, examine, and measure the said mines, pits, and shafts, which may be made and sunk by the said [*lessees*], their executors, administrators, or assigns, and for the purposes aforesaid, to use the tackle ropes, buckets, and other conveniences within the said mines, pits, or shafts belonging thereto, as often as he or they shall think proper; OF COAL MINES.

To HAVE, hold, use, exercise, and enjoy the said bed, mine, or seam of coal, liberties, licenses, powers, privileges and authorities, and all and singular other the premises hereby demised, or intended so to be, unto the said [*lessees*], their executors, administrators, and assigns, as tenants in common, for and during and unto the full end and term of twenty years, to commence from the day of , and fully to be complete and ended: YIELDING AND PAYING therefore yearly and every year during the said term, unto the said [*lessor*], his heirs and assigns, the yearly rent following (that is to say); in the first day of every year of the said term of twenty years hereby created, the yearly rent or sum of pounds of lawful money of Great Britain and Ireland, (the first payment thereof to be made immediately after the execution of these presents); AND the said [*lessees*] *Do* hereby jointly for themselves, their heirs, executors, administrators, and assigns, and each of them *Doth* hereby severally for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, in manner following (that is to say); that they the said [*lessees*], their executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay, or cause to be paid to the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever; *And also* shall and will well and truly pay and satisfy all the taxes and charges, dues and duties whatsoever, whether parliamentary or parochial, except the land tax, which now are or hereafter shall, during the said term, be payable in respect of the said premises hereby demised, or

Habendum.

Reddendum of a yearly rent, payable yearly.

Covenant by lessees for payment of rent.

and taxes;

OF COAL MINES.

and fence pits;

intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And further*, that they the said [*lessees*], their executors, administrators, and assigns, shall and will from time to time, and at all times during the term hereby granted, fence and defend with proper and substantial posts, rails, fences and walls, all pits, shafts, adits, roads, and ways, which shall in pursuance of these presents be sunk, made, or constructed by the said [*lessees*], their executors, administrators, or assigns, in, within, or upon the said premises hereby demised, or the said closes of land and waste, or any of them, or any part or parts thereof respectively; *And further*, that they the said [*lessees*], their executors, administrators, and assigns, shall and will, during the term hereby granted, do as little injury or damage as possible to the surface of the said closes or common hereinbefore described, or to the messuages, tenements, buildings, walls, fences, or other property thereon; *And* shall not nor will injure or endanger the houses, walls, and other erections on the said closes, or any of them, by undermining the foundations of the same, or any of them; *And further*, that they the said [*lessees*], their executors, administrators, and assigns, shall not, nor will, at any time or times during the term hereby granted, without the consent in writing of the said [*lessor*], his heirs or assigns, first had or obtained, get or procure any stone from any part of the said demised premises except for the purpose of making such roads, engine houses, stables, hovels, lodges, ovens, cabins, sheds, walls, and other erections, as hereinbefore are mentioned, or apply or dispose of the same when so got or procured, except for the purposes aforesaid; *And further*, that they the said [*lessees*], their executors, administrators, and assigns, shall and will, from time to time, when and as often as they shall cease or discontinue to work any pit or pits, shaft or shafts, in any part or parcels of the said demised premises, give notice thereof in writing to the said [*lessor*], his heirs or assigns, or leave such notice at his or their usual or then last place of abode, and shall and will, in case the said [*lessor*], his heirs or assigns, shall, within . months after such notice shall have been given or left as aforesaid, signify by some writing under his or their hand or hands, his or their desire that

and do as little injury as possible to surface of closes;

nor injure the houses by undermining the foundations.

and will not dig stone, except for the purposes aforesaid;

and give notice of discontinued pits;

such pit or pits, shaft or shafts, should not be closed, suffer the said pit or pits, shaft or shafts, to remain open and accessible during the remainder of the term hereby granted, to the intent that the said [*lessor*], his heirs and assigns, may either during the continuance of the said term, or after its expiration, use and employ the said pit or pits, shaft or shafts, for the purpose of procuring any iron, stone or ore, or other mineral, which may be immediately adjoining thereto, and can be got or worked by means thereof; *And also* shall and will, before the expiration of the said term hereby granted, fill up all other pits, shafts, and adits within the limits of the said bed and seam of coal hereby demised, unless the said [*lessor*], his heirs or assigns, should be desirous that the same be left open, and of such his desire, shall give six calendar months' notice in writing to the said [*lessees*], their executors, administrators, or assigns; *And also* shall and will remove and take up all roads which shall have been made during the continuance of the said term, on any part of the said closes or common hereinbefore described, and repair and amend all hedges, walls, and buildings thereon, which may have been altered or injured during the continuance of the said term, and for which a compensation shall have been claimed by the said [*lessor*], his heirs or assigns, in pursuance of the provision for that purpose hereinafter contained; and shall and will remove all scale and rubbish from the said closes or common hereinbefore described; *And* (whether the said [*lessor*], his heirs or assigns, shall or shall not require the said pits, shafts, and adits to be left open), shall and will, at the end or sooner determination of the said term of years, peaceably and quietly yield, surrender, leave, and give up the said several premises hereby demised as aforesaid, unto the said [*lessor*], his heirs or assigns; *And further*, that the said [*lessees*], their executors, administrators, and assigns, shall and will peaceably and quietly permit and suffer the said [*lessor*], his heirs and assigns, and his and their stewards, agents, workmen, and servants, at all convenient times, to enter upon the said demised premises, and to view the state thereof, and to inspect, examine, and measure the said mines, pits, and shafts, to be made and sunk in pursuance

and will fill up all other pits;

and will remove all roads made by him.

and repair all hedges;

and remove rubbish;

surrender premises at the end of the term;

and permit lessor and his servants to enter and view state thereof.

OF COAL MINES.

of these presents, and for the purposes aforesaid, to use the tackle, ropes, buckets, and other conveniences within the said mines, pits, or shafts, or belonging thereto, as often as they or he shall think proper: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said [*lessor*], his heirs or assigns, shall be desirous of purchasing all or any of the fire and other engines and implements belonging to the said [*lessees*], their executors, administrators, and assigns, which at the expiration of the said term hereby granted, shall be in or upon all or any of the premises hereby demised, or upon the said closes and common hereinbefore described, and shall of such his or their desire, give six calendar months previous notice in writing to the said [*lessees*], their executors, administrators, and assigns, or leave such notice in writing at their last or usual place of abode, then and in such case, the value of the said engines and implements which the said [*lessor*], his heirs or assigns, shall be so desirous of purchasing, shall, as soon as conveniently may be, after such notice shall have been so given or left as aforesaid, be ascertained by three indifferent persons, one of whom shall be chosen by the said [*lessor*], his heirs or assigns, another of them by the said [*lessees*], their executors, administrators, and assigns, and the third by the two persons so first chosen, and the valuation made by such three persons, or a majority of them, in case of a difference of opinion, shall be binding and conclusive on both the said parties; *And* the said [*lessor*], his heirs and assigns, shall, on the expiration of the term hereby demised, pay to the said [*lessees*], their executors, administrators, and assigns, the amount of the value so ascertained, and the said [*lessees*], their executors, administrators, and assigns, shall thereupon yield up the said engines and implements to the said [*lessor*], his heirs and assigns, together with the said premises hereby demised: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that when and so often as any injury shall have been done by the said [*lessees*], their executors, administrators, and assigns, or their or any of their agents, workmen, or servants, to the said closes or common hereinbefore described, or any part or parts

Agreement that lessee may purchase utensils at the end of the term.

Agreement that if any injury shall be done to the premises lessee shall pay the damage, the amount to be settled by arbitration.

thereof respectively, except as to the part or parts of the said closes actually occupied by them as aforesaid, for all or any of the purposes aforesaid, or to any messuages or tenements, buildings, walls, fences, or other property on the same closes or common, the sum or sums of money to be paid as a compensation for such injury or damage, shall be ascertained as follows, (that is to say); the said [*lessor*], his heirs or assigns, or his or their steward or agent, shall, (either of his or their own accord, or at the instance of the tenant or tenants, owner or owners of the part or parts, messuages or tenements, buildings, walls, fences, or other property so for the time being injured or damaged as aforesaid,) by notice in writing to be given to the said [*lessees*], their executors, administrators, or assigns, or to be left at their usual or then last abode, claim a compensation for such injury or damage, and within one calendar month next after every such notice shall have been so given and left as aforesaid, the said [*lessor*], his heirs or assigns, or his or their steward or agent, shall appoint some indifferent person on his or their part to ascertain the sum or sums to be so paid as a compensation, and the said [*lessees*], their executors, administrators, and assigns, shall appoint some indifferent person on their part to ascertain the sum or sums to be so paid as a compensation; *And* if the said [*lessees*], their executors, administrators, and assigns, shall neglect, for the space of one calendar month, to appoint such person as aforesaid, *Then* and in such case, the person to be appointed by the said [*lessor*], his heirs or assigns, or his or their steward or agent, shall appoint such second person to act on the part of the said [*lessees*], their executors, administrators, or assigns, and the two persons who shall be first appointed shall appoint a third person to act with them; *And* the determination of such three persons, or a majority of them, as to the sum or sums to be so paid as a compensation, shall be binding and conclusive on both the said parties (*b*): PROVIDED ALWAYS, and it is hereby

OF COAL MINES.

Agreement that when all the

(*b*) The following covenant is sometimes inserted in leases of this description:

Covenant by lessee not to take any person into his

"*And also* that he the said [*lessee*], his executors, admi-

OF COAL MINES.

coal shall be exhausted, term shall cease.

agreed and declared between and by the said parties to these presents, that when and so soon as the coal in the said beds and seams of coal hereby demised, shall have been fully got and worked, and also removed from the said closes of land hereinbefore described, and the rent, compensation, and other payments hereinbefore respectively reserved or agreed to be made, shall be fully paid and satisfied, then the said term hereby granted shall absolutely cease and determine, except as to any breach or breaches of covenant heretofore made or committed, and also except as to any covenant or covenants, agreement or agreements, then remaining to be observed and performed: PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall at any time or times during the said term, be in arrear and remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being lawfully demanded on the twenty-first or any subsequent day; or if any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessees*], their executors, administrators, and assigns, shall not be by them observed and performed, *Then*, and in either of such cases, it shall be lawful for the said [*lessor*], his heirs and assigns, into or upon the

Power for lessor to enter upon premises if default be made in payment of rent for twenty-one days, or on non-performance of any of the covenants.

---

service who may gain a settlement, except the inhabitants of a particular parish.

nistrators, or assigns, shall not nor will at any time during the continuance of the term hereby granted, hire, or take into or retain in his or their service or employment, in any capacity whatsoever, in or about the said premises hereby demised, or any part thereof, any person or persons whomsoever (not of the said parish of ), upon any terms, or in any manner howsoever, by or by means or reason whereof any such person or persons can, shall, or may attain or acquire a legal settlement in, or become a legally settled inhabitant of the said parish of , according to the laws which now are, or which at any time and from time to time during the said term, may be in force for or relating to the settlement, relief, or management of the poor."

said premises hereby demised, or intended so to be, or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if this indenture had not been made and executed, and the said [*lessees*], their executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding; *And* the said [*lessor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessees*], their executors, administrators, and assigns, that they the said [*lessees*], their executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*lessor*], his heirs or assigns, or any other person lawfully claiming, or to claim, by, from, or under him, them, or any of them, or by, from, or under his, their, or any of their acts, privity, consent, or procurement; *And further*, that if on the expiration of the term hereby granted, the said [*lessees*], their executors, administrators, and assigns, shall be desirous of having the said bed and seam of coal and premises hereby demised, or intended so to be, demised to them for a further term, he and they the said [*lessor*], his heirs and assigns, shall and will, at the request, and at the costs and charges of the said [*lessees*], their executors, administrators, and assigns, execute a fresh lease of the same bed and seam of coal and premises to the said [*lessees*], their executors, administrators, and assigns, for any further term, not exceeding twenty years, at and under the like yearly rents, covenants, conditions, and agreements, as are hereinbefore respectively reserved and contained; *But* not so as to double or otherwise increase the ultimate amount of payments which might have been made in respect of the said hereinbefore reserved rent, in case all the coal in the said beds and seams of coal hereby

Covenant by lessor for quiet enjoyment of lessees.

Proviso that if lessee shall be desirous of having a further lease, lessor will execute a fresh lease of the premises.

OF COAL MINES. demised, had been fully got and worked during the continuance of the term hereby granted. IN WITNESS, &c. (*c*).

---

OF MINES.

LEASE *of* LEAD AND COPPER MINES, *with necessary Privileges for Working the same;* REDDENDUM *of One-fifth Part of Produce to Lessor;* COVENANTS *by Lessor to search for Mines, and to enter upon such Search before the Day of , and employ Proper Workmen; and when a certain Quantity of Ore shall be washed, to remove it into a Storehouse; and that the Ore shall not be delivered out of Storehouse until it is weighed, and a Fifth Part delivered to Lessor; and that Lessee will weigh Ore whenever required; Agreement that both Lessor and Lessee shall keep a Lock and Key of the Storehouse in which the Ore is kept, and that Lessee will find sufficient Room in Storehouse for Lessor's One-fifth; and that Lessee will weigh Waste Ore, and deliver One-fifth to Lessor; and that Lessee will deliver up Premises at the End of the Term, and will pay Damages to be sustained in the Management of the Work.*

THIS INDENTURE, made the day of ,
Parties. BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of,
Testatum. &c. of the other part; WITNESSETH, that the said [*lessor*], for and in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and which on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, are to be paid and performed, *Hath* demised and leased, *And* by these presents *Doth* demise and lease unto the said [*lessee*], his executors, administra-

---

(*c*) This form, and the next, are also printed, with some alterations, in Mr. Atkinson's Precedents in Conveyancing.

OF MINES.

tors, or assigns, ALL THOSE the mines of copper, lead, and tin, and all ore or metal of what kind soever, and all veins and beds of the same, lying and being within the manor or lordship of , in the county of , with full and free liberty, during the term hereby granted, to make all necessary searches and trials in and throughout the said manor or lordship of for the said mines, minerals, and metals, and to win, dig, and work out whatever and so much of the same as shall be found therein, and to wash, clean, smelt, and dispose of the same, and for that purpose to break ground, blast rocks, build and erect covers and butts necessary for the works, make sinks, shafts, engines, smelting mills and houses, ore houses, groves, pipes, levels, adits, water gates, and aqueducts throughout the said premises, and to make trenches out of the said levels for unwatering and draining the said mines, veins, or groves, (excepting that he shall not dig, sink, drain, or work in or under any house, court, garden, or orchard, nor prejudice any corn-mill, walk-mill, or forge, situate and being within any part of the said manor or lordship of ,) with full and free liberty to bring and carry the said ore, and all necessary materials, to and from the said works, in carts and other carriages, at will and pleasure, during the term hereby granted; TO HAVE AND TO HOLD the said mines of copper, lead, and tin, and other minerals, unto him the said [*lessee*], his executors, administrators, and assigns, from the day of thence next ensuing, for and during the term of years, and fully to be complete and ended; YIELDING AND PAYING unto the said [*lessor*], his executors, administrators, and assigns, the full fifth part or dish of all such ore as shall be digged or got out of the said mines, to be well and sufficiently washed and cleansed at the expense of him the said [*lessee*], his executors, administrators, or assigns; AND the said [*lessee*] doth hereby for himself, his executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*lessor*], his heirs and assigns, in manner following; that he the said [*lessee*], his executors, administrators, and assigns, shall and will, at his and their own proper costs and charges, make, or cause to be made, all active, proper, and assiduous searches and trials

Parcels.

Mines.

With necessary privileges for working the mines.

Habendum for —— years.

Reddendum of one-fifth part of the produce.

Covenant by lessee to search for mines.

OF MINES.

in and through the said manor or lordship of for the said mines and minerals, by all the necessary, known, and usual methods, and will enter and begin to make the said searches and trials on or before the day of next ensuing the date hereof, and from thenceforth will constantly employ four able, well experienced, and sufficient workmen thereat, at his and their own expense as aforesaid, until the said mines and minerals shall be discovered, or any vein thereof; and so soon as the said mines or minerals shall be discovered, or any vein thereof, the said [*lessee*], his executors, administrators, and assigns, shall and will from thenceforth constantly employ, six months in each year during the term hereby granted, at least five able, well experienced, and sufficient workmen thereat, at his and their own expense as aforesaid; and as soon as thirty tons of the said ore shall be got and raised, that he the said [*lessee*], his executors, administrators, or assigns, shall and will constantly employ twenty able, well experienced workmen, to wash and clean all such ore as shall be then, or at any time after, during the said term hereby granted, got and raised as aforesaid, and to make the same good and merchantable; and shall and will, at the expense of the said [*lessee*], his executors, administrators, and assigns, remove the said ore, as the same, or any part thereof, shall be so washed and cleansed, into a storehouse that shall be built at the said work, so soon as twenty tons of ore shall be got and raised as aforesaid, for the lodging and securing of all ore that shall be got or raised as aforesaid; and that the same shall not be removed out of the said storehouse until it is weighed, and a full fifth part thereof delivered to the use of the said [*lessor*], his executors, administrators, or assigns; and the said [*lessee*] shall and will from time to time, and at all times during the term hereby granted, weigh the dressed ore whenever required by the said [*lessor*], his heirs or assigns, or his or their stewards or agents, by giving twenty days notice thereof, to be delivered in writing at the said works by him, them, or any of them; and that the said [*lessee*], his executors, administrators, or assigns, shall be at the like liberty to weigh the said ore at any time during the said term, by giving twenty days notice thereof to the stewards or

and will enter upon such search before the —— day of ——, and employ proper workmen;

and when a proper quantity of ore shall be washed, will remove it into a storehouse;

and that the ore shall not be delivered out of the storehouse until it is weighed, and a fifth part delivered to lessor;

and that lessee will weigh ore whenever required.

agents of the said [*lessor*], his executors, administrators, or assigns, to be appointed for the management of his or their fifth part of the said ore; AND IT IS HEREBY FURTHER AGREED by and between the said parties to these presents, that each of them, and their and each of their agents, shall keep a different lock and key of the said warehouse, and be at liberty to go into the same at pleasure, by giving notice thereof to attend each other; *And* that he the said [*lessee*], his executors, administrators, and assigns, shall and will during the said term find and provide sufficient room in the said storehouse for lodging and securing the said [*lessor*] his heirs and assigns' fifth part of the said ore, after the same shall be weighed and dressed as aforesaid; *And also* that he the said [*lessee*], his executors, administrators, and assigns, shall and will, at or before the end of every ten years of the said term hereby granted, weigh all the ore that shall or may be deemed waste ore, and deliver the full fifth part thereof, well and sufficiently washed, dressed, and made merchantable, to the use of the said [*lessor*], his heirs and assigns; and upon failure therein, all the said waste ore shall appertain and belong to the sole use of the said [*lessor*], his heirs and assigns for ever, without any account to be made or given to the said [*lessee*], his executors, administrators, or assigns for the same; *And* the said [*lessee*], his executors, administrators, and assigns, shall and will, at the end or expiration, or sooner determination of this present demise, peaceably and quietly yield and deliver up unto the said [*lessor*], his heirs and assigns, all and singular the said mines, workhouses, sheds, and covers that shall be erected and built upon the said premises hereby demised, and all wood and iron, and all other appurtenances thereto belonging; *And* the said [*lessee*] shall and will at all times when required, during this demise, pay all reasonable and sufficient damages that any person or persons shall sustain by reason of the carrying on and management of the said works, to be ascertained by two indifferent persons chosen to judge between them and the said parties; (*Power of re-entry on nonpayment of rent, or on nonperformance of covenants, as ante*, p. 14; *Covenant by lessor for quiet enjoyment, as ante*, p. 16.) IN WITNESS, &c.

Agreement that both lessor and lessee shall have a lock and key to the storehouse in which the ore is kept, and that lessor will find sufficient room in storehouse for lessor's one-fifth;

and that lessee will weigh waste ore, and deliver one-fifth to lessor.

and lessee will deliver up premises at the end of the term,

and will pay damages to be sustained in the management of the work.

BY GUARDIAN AND WARD.

## LEASE *by* GUARDIAN AND WARD *of a Dwelling House, for Years,* WITH USUAL CLAUSES AND PROVISIONS (*a*).

Parties. THIS INDENTURE, made, &c. BETWEEN [*guardian*] of, &c. guardian of the person and estates of [A. B.] of, &c. a minor, of the age of years, of the first part, the said [*minor*], of the second part; and [*lessee*] of, &c.

Testatum. of the third part; WITNESSETH, that in consideration of the rent, covenants, and agreements hereinafter reserved and contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be paid and performed,

Demise. HE the said [*guardian*], and also the said [*minor*] *Have,* and each of them *Hath,* demised and leased, and

---

(*a*) By an act of the present session, 1 Will. IV. c. 65. amongst other things, the law as to the renewal of leases, and for the granting fresh leases by persons labouring under disabilities, is consolidated and amended. The principal provisions may here be inserted with advantage. The statute also provides for the renewal and grant of leases by persons out of the jurisdiction of the court.

Guardians and minors, in order to the surrender and renewal of leases, may apply to the court of Chancery, &c. and by order may surrender such leases, and renew the same, &c. [*This section incorporates* 29 *Geo. II.* c. 31, *s.* 1.]

Section XII. is as follows: Be it enacted, that in all cases where any person, being under the age of twenty-one years, or a *feme covert,* is or shall become entitled to any lease or leases made or granted, or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable on the death of one or more person or persons or otherwise, it shall be lawful for such person under the age of twenty-one years, or for his or her guardian, or other person on his behalf, and for such *feme covert,* or any person on her behalf, to apply to the court of Chancery, [and court of Exchequer, by a subsequent section] in England, the courts of equity of the counties palatine of Chester, Lancaster, and Durham, or the courts of great session of the principality of Wales respectively, as to land within their respective jurisdiction, by petition or motion in a summary way; and by order and direction of the said courts respectively, such infant or *feme covert,* or his guardian, or any person appointed in the place of

BY GUARDIAN AND WARD.

by these presents *Do*, and each of them *Doth*, demise and lease unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or tenement, situate, &c. *Together* with all and singular outhouses, buildings, coachhouses, stables, cellars, areas, vaults, ancient and other lights, ways, paths, passages, drains, pipes, waters, watercourses, rights, privileges, advantages, easements, and appurtenances whatsoever, to the said messuage or tenement and premises belonging or in anywise appertaining; TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised, or intended so to be, unto the said [*lessee*], his executors, administrators, and assigns, from the day of last past, for and during, and unto the full end and term of years thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore, yearly and every year during the said term, unto the said [*guardian*], or other the guardian or guardians for the time being of the said [*minor*], during his minority, and from and immediately thereafter, unto the said [*minor*],

Parcels.

Habendum for —— years.

Reddendum unto guardian during minority, and on the minor attaining 21, to minor.

---

such *feme covert*, or infant, by the said courts respectively, shall and may be enabled from time to time, by deed or deeds, to surrender such lease or leases, and accept and take, in the place, and for the benefit of such person under the age of twenty-one years, or *feme covert*, one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise as the said courts shall respectively direct.

XIII. And be it further enacted, that in all cases where any person, being lunatic, shall become entitled to any lease or leases, made or granted, or to be made or granted, for the life or lives of one or more person or persons, or for any term of years either absolute or determinable upon the death of one or more person or persons, or otherwise, it shall be lawful for the committee of the estate of such person to apply to the Lord Chancellor of Great Britain, being intrusted by virtue of the king's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, by petition or motion in

Committees of lunatics may in like manner surrender leases, and renew the same. [*This section incorporates* 29 *Geo. II.* c. 31. *s.* 1.]

BY GUARDIAN AND WARD.

his heirs and assigns, the rent or sum of pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, upon the day of , the day of , the day of , and the day of , in every year, free and clear of and from all rates, taxes, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon, or payable for or in respect of the said premises hereby demised, or intended so to be, or any part thereof, the first payment thereof to be made on the day of now next ensuing; AND the said [*lessee*], doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree, with and to the said [*guardian*], or other the person or persons, guardian or guardians of the said [*minor*] for the time being, and with and to the said [*minor*], his heirs and assigns, in manner following, (that is to say); that he the said [*lessee*], his executors, administrators, and assigns, shall and will, from time to time, and at all times during the con-

Covenant by lessee with guardian and minor,

to pay rent to guardian and minor,

---

a summary way; and by the order and direction of the said Lord Chancellor, entrusted as aforesaid, such committee shall and may be enabled from time to time, by deed or deeds, in the place of such lunatic, to surrender such lease or leases, and to accept or take, in the name and for the benefit of such lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years absolute or determinable as aforesaid, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise, as the said Lord Chancellor entrusted as aforesaid shall direct.

Charges attending renewal to be charged on the estates, as the court shall direct.

XIV. And be it further enacted, that every sum of money, and other consideration paid by any guardian, trustee, committee, or other person as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate and effects of the infant or lunatic for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said courts and Lord Chancellor, intrusted as aforesaid respectively, shall direct and determine; and as to the leases to be made upon surrenders by *feme covert*, unless the fine and consideration of such

[*This and the next section are the same as the* 29 *Geo. II. c.* 31, *s.* 2 & 3.]

tinuance of the term hereby granted, well and truly pay, or cause to be paid unto the said [*guardian*], or other guardian or guardians of the said [*minor*] for the time being, during the minority of the said [*minor*], and when and after the said [*minor*] shall attain his age of twenty-one years, then unto him the said [*minor*], his heirs and assigns, the said yearly rent or sum of pounds, hereinbefore reserved, upon the several days, and in the manner hereinbefore mentioned or appointed for payment thereof, and according to the true intent and meaning of these presents; *And also*, shall and will well and truly pay and satisfy all taxes and charges, dues, and duties whatsoever, parliamentary or parochial, (except the land-tax) which now are, or hereafter shall, during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, from time to time, and at all times during the said term, at his

BY GUARDIAN AND WARD.

and taxes,

and to repair;

---

lease, and the reasonable charges, shall be otherwise paid or secured, the same, together with interest, shall be a charge upon such leasehold premises, for the benefit of the person who shall advance the same.

XV. And be it further enacted, that every lease to be renewed as aforesaid shall operate to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises, and conditions, as the lease to be from time to time surrendered as aforesaid, was or would have been subject to, in case such surrender had not been made.

New leases shall be to the same uses.

XVI. And be it further enacted, that where any person, being under the age of twenty-one years, or a *feme covert*, might in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute or determinable on the death of one or more person or persons, it shall be lawful to and for such infant, or such *feme covert*, by the direction of the court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant, or his guardian, or of such *feme covert*, or of any person entitled to such renewal, from time to time to accept of a surrender of such lease, and to make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon

Infants, &c. empowered to grant renewals of leases.

BY GUARDIAN AND WARD.

and their own costs and charges, well and sufficiently repair, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, way-draughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And* shall and will, in every fourth year of the said term hereby granted, at his own costs and charges, paint or cause to be painted with two coats of good oil colour, all and every the outer doors, rails, window frames, and other the outside wood and iron work of the said messuage or tenement and premises; (*Covenant to insure the premises in the value of pounds, and lay out the money recovered upon the premises, as ante*, Vol. IV. *p.* 458; *Agreement that if the lessee shall not insure, lessor may do so, and recover the expenses from lessee, as*

and to paint outerwork.

---

such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise as the court by such order shall direct.

Court of Chancery may authorize leases to be made of lands belonging to infants, when it is to the benefit of the estate.

XVII. And be it further enacted, that where any person, being an infant under the age of twenty-one years, is or shall be seised or possessed of, or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the court of Chancery to be for the benefit of such person, that a lease or underlease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, it shall be lawful for such infant, or his guardian in the name of such infant, by the direction of the court of Chancery, to be signified by an order to be made in a summary way upon the petition of such infant or his guardian, to make such lease of the land of such person respectively, or any part thereof, according to his, her, or their interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants, as the said court of Chancery shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent that can be obtained, regard being

*ante*, Vol. IV, p. 459;) AND the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree, with and to the said [*guardian*], or other the person or persons, guardian or guardians of the said [*minor*] for the time being, and with and to the said [*minor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will during the said term, grant, demise, underlet, assign, or set over, or otherwise by any act or deed, procure or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, or set over, unto any person or persons whomsoever, without the consent in writing of the said guardian or [*minor*], his heirs and assigns, first had and obtained; *And* that he shall not nor will at any time, during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, any trade or business whatever, nor convert the

BY GUARDIAN AND WARD.

Covenant by lessee not to assign without license of guardian or minor.

Covenant not to carry on any trade,

---

had to the nature of the lease, shall be reserved upon such lease; and the leases, and covenants and provisions therein, shall be settled and approved of by a master of the said court, and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named, and such counterparts shall be deposited for safe custody in the master's office, until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the mean time, for the purpose of enforcing any of the covenants therein contained; provided that no lease be made of the capital mansion-house, and the park and grounds respectively held therein, for any period exceeding the minority of any such infant.

XVIII. And be it further enacted, that where any person who, in pursuance of any covenant or agreement in writing, might, if within the jurisdiction and amenable to the process of the court of Chancery, be compelled to execute any lease by way of renewal, shall not be within the jurisdiction, or not amenable to the process of the said court, it shall be lawful to and for the said court of Chancery, by an order to be made upon the petition of any person, or any of the persons entitled to such renewal, (whether such person be or be not under any disability,) to direct such person as the said court shall think proper to appoint for that purpose, to accept a surrender of the subsisting lease,

If persons bound to renew are out of the jurisdiction of the court, the renewals shall be made by a person appointed by the court of Chancery, in the name of the person who ought to have renewed.

BY GUARDIAN AND WARD.

said messuage or tenement into a shop or shops, warehouse, or storehouse, or otherwise attempt to carry on any trade or business whatever, without the consent in writing of the said guardian or [*minor*], his heirs and assigns, first had and obtained; *And further*, shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly yield up unto the said guardian or [*minor*], his heirs or assigns, together with all buildings, erections, and fixtures now or hereafter to be built or erected therein or thereon, the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damages by fire only excepted; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*guardian*], or other the person or persons, guardian or guardians of the said [*minor*] for the time being, and for the said [*minor*], his heirs and assigns, with or without workmen, as to them shall seem fit, twice in every year during the said term, by giv-

and leave the premises in repair.

Power to enter upon the premises twice a-year, to view the state of repair.

---

and make and execute a new lease in the name of the person who ought to have renewed the same; and such deed executed by the person aforesaid, shall be as valid as if the person in whose name the same shall be made, had executed the same, and had been alive and not under any disability; but in every such case it shall be in the discretion of the court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the renewal, and not to make the order for such new lease, unless by the decree to be made in such cause, or until after such decree shall have been made.

Committees of lunatic, by the direction of the Lord Chancellor, may accept of surrenders and make new leases. [*This section is the same as the* 11 *Geo. III. c.* 20, *s.* 1.]

XIX. And be it further enacted, that where any person, being lunatic, is or shall be entitled, or has a right, or in pursuance of any covenant or agreement might, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more person or persons, or otherwise, it shall be lawful to and for the committee of the estate of any such lunatic, in the name of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in a summary way upon the petition of such committee, or of any person en-

ing three days' previous notice in writing, of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage, or tenement and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said guardian or [*minor*], his heirs and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments then and therein found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, to give notice in writing at or upon the same messuage or tenement, to the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same within the space of six calendar months after such notice; within which space of six calendar months, or sooner if occasion shall require, he the said [*lessee*], his executors, administrators, or assigns, shall and will repair, amend, and cleanse the same in all things, according to the true intent and meaning of these presents; PROVIDED ALWAYS, and it is hereby agreed,

BY GUARDIAN AND WARD.

Power for lessor to enter on

---

titled to such renewal, from time to time to accept a surrender of such lease, and to make and execute to any person a new lease of the premises comprised in such lease, to be surrendered by virtue of this act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered, at the making thereof, or otherwise, as the Lord Chancellor, intrusted as aforesaid, by such order shall direct; and this provision shall extend as well to cases where the lunatic shall not be compellable to renew, but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic, if of sound mind.

Fines to be paid before renewals and counterparts are executed.

XX. Provided always, and be it further enacted, that no renewed lease shall be executed by virtue of this act, in pursuance of any covenant or agreement, unless the fine (if any), or such sum or sums of money (if any), as ought to be paid on such renewal, and such things (if any), as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid and performed; and counterparts of every renewed lease to be executed by virtue of this act, shall be duly executed by the lessee.

Premiums, how to be paid.

XXI. And be it further enacted, that all fines, premiums, and sums

BY GUARDIAN AND WARD.

premises, if default shall be made in payment of rent for 21 days, or on nonperformance of any of the covenants.

that if the rent hereby reserved, or any part thereof, shall at any time or times during the said term be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinafter contained, the same being lawfully demanded on the twenty-first or any subsequent day, or any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed, then and in either of such cases it shall be lawful for the said [*guardian*], or other the person or persons who shall be

---

[*This section incorporates* 11 *G.* 3. *c.* 20. *s.* 3.]

of money, which shall be had, received, or paid, for or on account of the renewal of any lease, after a deduction of all necessary incidental charges and expenses, shall be paid, if such renewal shall be made by or in the name of an infant, to his guardian, and be applied and disposed of for the benefit of such infant, in such manner as the said court shall direct; if such renewal shall be made by a *feme covert*, to such person or in such manner as the court shall direct, for her benefit; if such renewal shall be made by any person out of the jurisdiction, or not amenable as aforesaid, to such person or in such manner, or into the court of Chancery, to such account, and to be applied and disposed of as the said court shall direct; and if such renewal should be made in the name of a lunatic, to the committee of the estate of such lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the Lord Chancellor entrusted as aforesaid shall direct; but upon the death of such lunatic, all such sum and sums of money as shall arise by such fines or premiums, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate.

On death of lunatic, money arising from such sales to be considered real estate.

The Irish act 11 Ann. c. 3. continued unaltered.

[*Whereby persons labouring under disabilities are enabled to renew and grant leases.*]

XXII. And whereas by the said act passed in the parliament of Ireland in the eleventh year of the reign of Queen Anne, after reciting that several persons had theretofore made and thereafter might make leases for one or more life or lives, of several lands, tenements, and hereditaments, in the said then kingdom of Ireland, with covenants and agreements in such leases for renewing the same from time to time, on the tender and payment of some fine certain, on the death of any life or lives in such lease or leases mentioned, by adding such one or more life or lives, on failure of the life or lives in being, within the

guardian or guardians of the said [*minor*] for the time being, or for the said [*minor*], his heirs or assigns, into or upon the said messuage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof in the name of the whole to enter, and the same to have again, repossess, and enjoy, as of his and their former estate, as if this indenture had never been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel, put out, and remove, any thing herein contained to the contrary notwithstanding; *And* the said [*guardian*] *Doth* hereby for

BY GUARDIAN AND WARD.

Covenant by lessor for quiet

---

respective times in such agreements and covenants mentioned, as the several lessee or lessees in such lease or leases should nominate; and also reciting that through one pretence or other, on the fall or failure of any life or lives in being, the lessee or lessees were greatly delayed before he or they could obtain any renewal, according to the covenants and agreements in their leases, to their very great discouragement; for remedy whereof it was enacted, that if it should so happen that any person or persons who, in pursuance of such agreements for renewal in such leases contained, or to be contained, ought to make such new lease or leases as had been or should be agreed to be made, should be under any disability so to do, by reason of infancy, coverture, or *non compos mentis*, that then, and in every such case, (that is to say,) in case of disability by reason of infancy, or being under age, by the direction of the high court of Chancery or court of Exchequer, signified by an order made upon hearing all parties concerned on the petition of such lessee or lessees, it should and might be lawful to and for the guardian or guardians of such infant or person under age, upon such lessee or lessees tendering the fine or fines agreed on in such lease, and performing all such matters and things as by the said covenants and agreements ought to be performed on his or their part and behalf, previous to such renewal, in such manner as should by such order be directed, to renew such lease or leases, by adding such new life or lives as should be named by the said lessee or lessees, according to the said covenants and agreements, and such guardian or guardians were thereby required to renew such lease or leases, by putting in such new life or lives as should be so named unto them as aforesaid, while the infant or minor of such guardian or guardians should be under any disability, or infancy, or under age; and it was further enacted, that in all cases where the person or persons who by covenant or agreement were obliged to make such renewals, were or should

BY GUARDIAN AND WARD.

himself, his heirs, executors, and administrators, and the said [*minor*], so far as he can or may, *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may quietly and peaceably have, hold, occupy, possess, and enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or dis-

enjoyment of lessee.

---

be disabled to renew by reason of being under coverture, beyond the seas, or *non compos mentis*, it should and might be lawful to and for the said Lord Chancellor, or commissioner or commissioners of the great seal of the said then kingdom of Ireland for the time being, upon petition or complaint made to him or them in the high court of Chancery, upon payment of the fine, and such other sum or sums of money as ought to be paid upon such renewal, for the use of the person or persons entitled to the same, and upon the lessee or lessees doing and performing all and every such matters and things as by the said covenants or agreements in the said lease or leases ought to be done or performed by him or them previous to such renewal, to order or appoint such renewal or renewals to be made by one of the masters of the said court of Chancery, to be nominated and appointed by the said Lord Chancellor, or commissioner or commissioners of the great seal for the time being; and such master so nominated and appointed, and also such guardian or guardians as aforesaid, should make and execute such deed of renewal in the name of the person or persons who ought to have renewed the same; which deed or deeds of renewal so made and executed by the said guardian or guardians, master or masters, counterparts thereof being duly perfected by the said lessee or lessees, for the use and benefit of the person or persons having the reversion and inheritance of such lands, tenements, or hereditaments comprised in the said deed or deeds, should be as good and effectual in law and equity, to all intents and purposes, as if the person or persons under age had been of full age, and had executed the same, or as if the other person or persons under such disability had not been so disabled, and had executed the same; provided such person or persons under age, or under such disability as aforesaid, were, at the time of the renewal of such lease, compellable at law or equity to make such renewal: And whereas it is expedient that the provisions of the said recited act, which have been so long in force in Ireland, should

turbance whatsoever, of, from, or by the said [*guardian*], or other the person or persons who may be guardian or guardians of the said [*minor*] for the time being, or the said [*minor*], his heirs or assigns, or any other person lawfully claiming, or to claim by, from, or under them, or any of them, or by, from, or under their, or any of their acts, privity, consent, or procurement. IN WITNESS, &c.

BY GUARDIAN AND WARD.

---

remain unaltered; be it therefore further enacted, that the clauses and provisions contained in the said act shall be and continue in force in the same manner to all intents and purposes as if the said clauses and provisions, and every part thereof, had been repeated and re-enacted in this act, and none of the other provisions in this act for authorising any surrenders to be accepted, or any new lease to be made or executed, for or on behalf of any person who in pursuance of any covenant or agreement for renewal of any lease contained, or to be contained, ought to make such new lease or leases, shall extend, or be construed to extend, to land in Ireland.

The power of leasing lands, &c. of lunatics having a limited estate may be executed by the committee. [*This section and the next are the same as the* 43 *G. III. c.* 75. *s.* 3. *and* 4.]

XXIII. And be it further enacted, that where any person being lunatic, is or shall be seised or possessed of any land, either for life or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing, which is or shall be vested in such person, being lunatic, and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted as aforesaid.

Where lunatics are seised of estates in fee or in tail, or an absolute interest in leasehold estates, the chancellor may direct leases to be made.

XXIV. And be it further enacted, that where any person being lunatic, is or shall be possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the said Lord Chancellor, intrusted as aforesaid, to be for the benefit of such person that a lease or underlease should be made of such estates for terms of years, for encouraging the erection of buildings therein, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, it shall be lawful for the Lord Chancellor intrusted as aforesaid, to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants, as the Lord High Chancellor entrusted as aforesaid, shall direct.

OF A RIGHT OF WAY.

LEASE *of a* RIGHT OF WAY. *Covenants by Lessee to* PAY RENT, *and* NOT TO USE *the Right of Way in any way which may become a* NUISANCE *to Lessor.* POWER *to* DISTRAIN *on Premises belonging to Lessee, if Rent shall be in Arrear for Twenty-one Days.* POWER *to* DETERMINE *the Lease by Notice from the Lessor, on the Rent being in Arrear for Forty Days.* COVENANT *by Lessor for Quiet Enjoyment.*

THIS INDENTURE, made the day of ;

Parties.

BETWEEN [*lessor*], of, &c. of the one part, and [*lessee*] of, &c. of the other part; WHEREAS the said [*lessor*] is seised of, or well entitled in fee simple to a messuage or tenement,

That lessor is entitled to a messuage and yard;

and to a yard thereto adjoining, situate in Lane, in the county of Middlesex; AND WHEREAS the said [*lessee*] is possessed of or well entitled to a messuage or dwelling house, situate in street, in the said county of Middlesex, and looking on the northern or backside thereof into the said yard, belonging to the said [*lessor*],

that lessee is entitled to a messuage for a term of years.

for the term of years; AND WHEREAS the said [*lessee*] hath contracted and agreed with the said [*lessor*] for a right of way through the said yard to the back part of the said messuage or dwelling-house so belonging to the said [*lessee*], as hereinbefore is mentioned, for the said term of years, for the considerations hereinafter mentioned; *And* the said [*lessee*] is desirous of having the same right of way demised to him in the manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the yearly rent hereby reserved, and of the covenants hereinafter contained on the part of the said [*lessee*], his executors, administrators, and as-

Contract for right of way.

Witnessing part.

(*a*) As to rights of way, see Vol. IV. p. 297.

signs to be respectively paid and performed, HE the said [*lessor*] *Hath* granted and demised, and by these presents *Doth*, &c. unto the said [*lessee*], his executors, administrators, and assigns, free license, liberty, and right of way and passage, and of ingress, egress, and regress to and for the said [*lessee*], his executors, administrators, and assigns, and their and every of their workmen, labourers, friends, and acquaintances, and all and every other person and persons going to and coming from the said lane, called Lane, to the back or northern side of the said messuage or dwelling-house so belonging to the said [*lessee*] as hereinbefore is mentioned, from time to time, and at all times in every day, from the hour of o'clock in the morning, until o'clock in the evening, to go, pass, and repass on foot, in, by and through, and over the said yard so belonging to the said [*lessor*], as hereinbefore is mentioned, *Together* with all privileges, advantages, and appurtenances to the said liberty or right of way belonging, or in anywise appertaining: TO HAVE AND TO HOLD the said liberty and right of way and passage, and appurtenances hereby demised, unto the said [*lessee*], his executors, administrators, and assigns, from the day of , for the term of years thence next ensuing, and fully to be complete and ended: YIELDING AND PAYING therefore, yearly and every year, during the said term of years hereby granted, the yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, on the day of , the day of , the day of , and the day of , in every year, free from all taxes, rates, and assessments, and without any deduction whatsoever, the first payment thereof to be made on the day of ; *And* the said [*lessee*] *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with the said [*lessor*], his heirs and assigns, in manner following, (that is to say); that he the said [*lessee*], his executors, administrators, or assigns, shall and will from time to time during the said term hereby granted, duly pay, or cause to be paid unto the said [*lessor*], his heirs and assigns, the

OF A RIGHT OF WAY.

Demise.

Parcels.

Right of way.

Habendum.

Reddendum.

Covenant by lessee to pay rent,

OF A RIGHT OF WAY.

said yearly rent or sum of . . . pounds hereinbefore reserved, by equal quarterly payments, on the days hereinbefore mentioned for that purpose, without any deduction or abatement whatsoever on account of any present or future taxes, or otherwise howsoever; *And also*, that he the said [*lessee*], his executors, administrators, or assigns, shall not nor will, at any time or times during the said term hereby granted, use, or permit, or suffer the said liberty or right of way or passage hereby demised, to be used by any person or persons whomsoever, for the purpose of carrying or conveying coals, dust, ashes, nightsoil, dirt, filth, or other things which may be or become a nuisance to the said [*lessor*], his heirs or assigns, or other the person or persons for the time being occupying the said messuage or tenement so belonging to the said [*lessor*], as hereinbefore is mentioned: PROVIDED ALWAYS, and it is hereby agreed between the parties hereto, that in case, and so often as the said yearly rent or sum of pounds hereby reserved, or any part thereof, shall at any time or times during the said term of years hereby granted, be and remain unpaid for the space of twenty-one days next after any of the said days hereby appointed for the payment thereof respectively, *Then* and in every such case, it shall be lawful for the said [*lessor*], his heirs or assigns, into and upon the said messuage or dwelling house, so belonging to the said [*lessee*], as hereinbefore is mentioned, or into or upon any part thereof, to enter and distrain for the same rent, and all arrears thereof, and the distress and distresses then and there found, to take and carry away in like manner as landlords are authorised to do for rent in arrear, to the intent, that thereby and therewith the said [*lessor*], his heirs and assigns, may be fully paid and satisfied the said yearly rent or sum of pounds, and all arrears thereof, or so much thereof as shall be due, and all costs and expenses whatsoever occasioned by the nonpayment thereof; PROVIDED ALWAYS, and it is hereby further agreed between and by the parties hereto, that in case the said yearly rent or sum of pounds, or any part thereof, shall be unpaid by the space of forty days next after any of the times hereinbefore mentioned for the payment thereof, (being first lawfully demanded at the ex-

and will not use the right of way for any purpose which may be a nuisance to the lessor.

Power to distrain for rent on premises belonging to lessee, if rent shall be in arrear 21 days.

Power to determine the lease by notice from the lessor, on the rent being in arrear for 40 days.

piration of the said forty days, or at any time afterwards), *Then* and in such case, three days after notice in writing to that effect shall be served on the said [*lessee*], his executors, administrators, and assigns, or left at his or their usual place or places of abode by the said [*lessor*], his heirs and assigns, these presents, and the demise hereby made, and the said term of years, shall, from and immediately after the expiration of such three days, cease, determine, and be absolutely void, to all intents and purposes whatsoever; *And* the said [*lessor*] *Doth* hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that it shall be lawful for the said [*lessee*], his executors, administrators, and assigns, (paying the said yearly rent of pounds hereby reserved, and performing the covenants hereinbefore contained on his and their parts to be paid and performed,) and for his workmen, labourers, friends, and acquaintances, and all and every other person or persons going to and coming from the said lane, called Lane, to the back or northern side of the said messuage or dwelling house so belonging to the said [*lessee*], as hereinbefore is mentioned, from time to time, and at all times in every day, from the said hour of o'clock in the morning, to the hour of o'clock in the evening, during the said term hereby granted, to go, pass, and repass on foot, through, by, and over the said yard, so belonging to the said [*lessor*], his heirs and assigns, as hereinbefore is mentioned, without any let, hindrance, or disturbance whatsoever, of, from, or by the said [*lessor*], his heirs or assigns, or any person or persons claiming, or to claim by, from, through, under, or in trust for him or them, or by or through his means, privity, or procurement. IN WITNESS, &c.

OF A RIGHT OF WAY.

Covenant by lessor for quiet enjoyment.

OF LANDS AND COAL MINES.

LEASE *of* LANDS AND COAL MINES, *with Liberty to* DIG *for and Work* MINES, *and to* MAKE ROADS, *and* GET STONE, SAND, *and* BRICK EARTH *and* BURN BRICKS *for the Use of the Mines, and to* LAY DRY *the Mines;* REDDENDUMS *of a Surface Rent for the Lands, and Additional* RENTS AND ROYALTIES *for the Coal, and Additional Rent if Tons shall not be raised every Week, and also an* ADDITIONAL RENT *for every Sack of Coke;* COVENANTS *by Lessee to pay* RENTS *and* TAXES, *and to deliver* ACCOUNT *of Coals sold, and pay Taxes, and to keep Premises in Repair; that he will* OPEN MINES, *and* RAISE *Tons of* COAL *per Week, or pay Additional Rent; to work Mines in a* PROPER MANNER, *and not to work too close to the* PILLARS; *to* LEVEL *the Ground so as to make it Ploughable, and fill up the Useless Pits:* POWER *for Lessor to* INSPECT *the Manner of Working the Mines, and if improperly Worked, to* GIVE NOTICE *to Lessee to stop Working until Satisfaction;* COVENANT *by Lessor that he will* PROVIDE BOOKS *to enter Quantity of Coal, and Liberty for Lessor to inspect Books;* PROVISO *that Royalties shall be paid in* MONEY, OR BILLS *on London;* POWER *to Lessor to* FIX BOARD *on Premises for letting the Same; that Lessee will* QUIT *at the Expiration of the Term;* LESSEE *to have the Use of the* TOOLS *during the Term, and Lessor to have the* OPTION OF PURCHASING *the Same at the End of the Term;* COVENANTS *by Lessor that he has Good Right to make the Lease, and for Quiet Enjoyment;* ARBITRATION CLAUSE (*with* VARIATIONS *in Notes*).

Parties.

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*lessee*] of,

OF LANDS AND COAL MINES.

&c. of the other part; WITNESSETH, that in consideration of the several rents and royalties hereby reserved, and of the covenants and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be respectively paid, observed, and performed, HE the said [*lessor*] *Hath* granted and demised, *And* by these presents *Doth* grant and demise unto the said [*lessee*], his executors, administrators, and assigns, ALL THOSE, &c. (*lands*), (*a*) *And* also ALL AND EVERY the mines, pits, and veins of coal, and other mineral products lying and being in and under ALL THAT the said piece or parcel of land, &c. which now are open or known, or which shall or may be found or discovered therein during the continuance of this demise or lease, *Together* with full and free liberty, power, and authority for the said [*lessee*], his executors, administrators, and assigns, and his and their agents, servants, miners, and workmen, from time to time, and at all times during the continuance of the said term hereby granted, at his or their costs and charges, to enter into and upon the said pieces or parcels of land and premises hereby demised, or any part or parts thereof, and there to dig, bore, delve, sink, search for, and raise, get, work, and win the said pits, mines, and veins, and follow and pursue the same, and for that purpose to sink such and so many shafts, and to drive such and so many headways, soughs, levels, and drains, and to erect and set up such and so many fire engines, whimsies, cranks, gins, and all other machines, and to take down and again put up the same, and to make use of all such other ways and means as shall be found necessary or expedient for raising, getting, working, and winning the said coal and ore out of the said mines and veins, and for draining, raising, and discharging the water therefrom, in the best manner, or as most usually is practised in such and the like undertakings, and to place and stack up such coal and ore, and the earth, rubbish, or soil to be raised out of the said pits, shafts, and mines, upon the said pieces or parcels of land, and to have, take, and carry away, at his and their free will and pleasure, and

Witnessing part.

Demise.

Parcels.

Liberty to dig and work the mines;

(*a*) The mines are frequently demised alone. See *ante*, p. 62. Mines.

OF LANDS AND COAL MINES.

to convert for and to his and their own proper use and benefit, all such coal and oré as shall or may be gotten or raised from the said pits, shafts, mines, and veins; *And* also to make such and so many waggon-roads or railways, and cuts, pools, or canals in and over the said lands and ground, and to do and perform all other reasonable acts or things necessary or proper for the carrying away the said coals, ore, and other produce of the said pits or mines, as shall from time to time be necessary; *And* also full and free liberty of ingress, egress, and regress, into, out of, and from the said lands, grounds, and premises, or any part thereof, with horses, carts, waggons, and other carriages, or otherwise, as shall be necessary for taking, conveying and carrying away, selling, and disposing of the said coal, ore, and other produce thereof, in, by, and through all such roads, ways, cuts, and canals, or any of them, or any part thereof (subject only to the agreements and conditions hereinafter contained); *And* also with full and free liberty, license, power, and authority for the said [*lessee*], his executors, administrators, and assigns, from time to time, and at all times during the continuance of the said term hereby granted, at his and their free will and pleasure, and at his and their own costs and charges, to raise, dig, and get stones, sand, fine and common brick earth, or clay, in any convenient part of the said pieces or parcels of land, and to make and burn bricks, tiles, and other articles for the erecting and building, repairing and altering any furnaces, engines, works, forges, mills, erections, and buildings upon the said pieces or parcels of land and premises hereby demised, or intended so to be; *And likewise* to do all other necessary acts, matters, and things, for laying dry, raising, getting, converting, manufacturing, or disposing of the said mines or pits, and the produce thereof, as to him the said [*lessee*], his executors or administrators, shall seem proper and necessary or expedient; *Together* with all and singular the ways, waters, watercourses, commodities, privileges, appendages, and appurtenances whatsoever, to the said mines, pieces, or parcels of land, hereditaments, and premises hereby demised, or intended so to be, belonging, or in any wise appertaining, or which heretofore

and to make roads.

Liberty for lessee to get stone, sand, and brick earth;

and to burn bricks, &c. for the use of mines;

and to lay dry the mines.

General words.

have or has been, or ought to be, or have been used, occupied, or enjoyed therewith (*a*); To HAVE AND TO HOLD the said pieces or parcels of land, mines, veins, seams of coal and ore, lying and being in and under the same, and all and singular other the premises hereby demised, or intended so to be, unto the said [*lessee*], his executors, administrators, and assigns, from the day of last past, for and during, and unto the full end and term of years from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING

OF LANDS AND COAL MINES.

To hold to the lessee for —— years.

Reddendum for the land, the

---

(*a*) The following reservations are frequently made in leases of this nature:

Exceptions and reservations.

"Except nevertheless, and reserved out of this demise and grant hereby made, unto the said [*lessor*], his heirs and assigns, during the continuance of the said term, all such other seams, strata, veins, and mines of coal, as are situate and lying either above or beneath the said mine or stratum of ten yard coal, and all and all manner of iron stone, pot and pipe clay, fire clay, stone, and all other mines and minerals, of what nature or kind soever the same may be; *And also* full and free liberty for the said [*lessor*], his heirs or assigns, or his or their respective workmen, agents, and labourers, to have and enjoy free egress and regress, for the purpose of using, occupying, and enjoying the said excepted mines and premises, for the purpose of working, digging, and breaking up, getting, and carrying away, converting, and selling the said excepted coal, iron stone, mines, minerals, clay, and stone, at his and their will and pleasure; and for the purposes last aforesaid, to make use of or deepen all or any of the pits or shafts which have already been made by the said [*lessor*], or which shall or may hereafter be made or sunk by the said [*lessee*], his executors, administrators, or assigns, on any of the said lands and premises, when he the said [*lessee*], his executors, administrators, or assigns, shall have worked out such pits, and have discontinued using such shafts, and to erect, build, and construct all such erections, buildings, furnaces, kiln-works, machinery, and conveniences as he or they shall think necessary, for all or

Of all other mines of lessor, above or below the demised mines,

with power of entry to work them.

to make use of shafts disused by lessee.

OF LANDS AND COAL MINES.

yearly rent of —*l.*

therefore, yearly and every year, during the said term of years hereby demised, unto the said [*lessor*], his heirs and assigns, the yearly rent or sum of pounds of lawful money of Great Britain and Ireland, for the surface of the said pieces or parcels of land hereby demised, or intended so to be, free and clear of and from all taxes, charges, and assessments whatsoever, whether parliamentary or parochial, which now are charged or assessed, or which shall hereafter be charged or assessed upon the said premises, or the erections and buildings to be erected and built thereon, and to be paid by four equal quarterly payments in every year, (that is to say;) on the day of , the day of ,

---

Powers reserved to lessor, not to interfere with the working of the mines demised,

any of the purposes aforesaid; *But* nevertheless so as that the said [*lessor*], his heirs and assigns, in the getting and working the said excepted mines, or in the use or enjoyment of any of the powers hereby reserved, do not obstruct, hinder, or prevent the said [*lessee*], his executors, administrators, or assigns, from getting, converting, and disposing of the mines hereby demised to the best advantage, and so as that the same [*lessor*], his heirs or assigns, do make such reasonable compensation to the said [*lessee*], his executors, administrators, or assigns, for all such damage or interruption as shall be occasioned to him or them in the enjoyment of the said hereby demised mines and premises, by reason or in consequence of the said excepted liberties, powers, privileges, and authorities, and also for the coal that shall be left by him the said [*lessee*], his executors, administrators, and assigns, for the necessary support and preservation of the shafts, for the use of the said [*lessor*], his heirs or assigns; *And* also making an abatement in the surface rent hereinafter reserved, for so much of the said land for the time being in the occupation and possession of the said [*lessee*], his executors, administrators, and assigns, as shall be so used by the said [*lessor*], his heirs or assigns, for the purpose aforesaid; the amount of such compensation, in case of the disagreement of the said parties respecting the same, to be settled and ascertained by reference to arbitration, in pursuance of the clause hereinafter for that purpose contained."

and compensation to be made for any damage or interruption to lessee.

the day of , and the day of , in every year, the first quarterly payment thereof to be made on the day of ; AND ALSO YIELDING AND PAYING (*b*), during the said term, over and above the said yearly rent of pounds, the sum of shillings of like lawful money, for each and every ton (the said ton weighing twenty-one hundred weight, and each hundred weight one hundred and twenty pounds) of coal, called or considered as best coal, (and so in proportion for a greater or less quantity than a

OF LANDS AND COAL MINES.

Additional reddendum of — shillings for every ton of best coal, and — shillings for inferior coal.

---

(*b*) The following variation may here be properly inserted :

Reddendum :

"And also yielding and paying unto the said [*lessor*], his heirs and assigns, during the said term, the following rents or royalties, (that is to say;) so long as, and whenever during the said term, the regular market price of large or best coal shall not exceed the sum of shillings per ton, then the royalty or rent to be paid in respect of such large or best coal, shall be shillings for every ton weight of such large or best coal, to be won, gotten, or raised from and out of the said mine, and so in proportion for any greater or less quantity than a ton, each ton weight to consist of twenty-one hundred weight, and each hundred weight to consist of one hundred and twenty pounds; and so long as, and whenever during the said term, the regular market price of lumps or round coal shall not exceed the sum of shillings per ton, the rent or royalty to be paid in respect of such lumps or round coal, to be won, raised, or gotten out of the said mine, shall be shillings for every ton weight of such lumps or round coal, and so in proportion for any less quantity than a ton, each ton to be of the contents aforesaid; and so long as, and whenever during the said term, the regular market price of coke shall not exceed shillings and pence per sack, the rent or royalty to be paid in respect of such coke as shall be made upon the above mentioned lands and premises, shall be pence for every sack, and so in proportion for any greater or less quantity than a sack; *But* whenever and so often as it shall happen during the said term, that the regular or market price of large or best coal shall exceed the sum of shillings

Of royalties, varying according to the market price;

for large or best coal, —— shillings per ton, when market price does not exceed — shillings.

Contents of each ton :

for lump or round coal, when market price does not exceed — shillings, — shillings :

for coke, —— pence per sack, when market price does not exceed —*s.*—*d.*

When market price is above the specified prices, royalty to be one third of such excess.

OF LANDS AND COAL MINES.

ton,) which shall be raised or obtained from the mines or pits hereby demised, and which shall at any time during the said term, fetch or be sold by the said [*lessee*], his executors, administrators, and assigns, for shillings per ton; *And also* the sum of shillings of like lawful money, for each and every ton of coals, called or considered as black, faulty, or inferior coal, (and so in proportion for any greater or less quantity than a ton,) which shall be raised or obtained from the mines or pits hereby demised, and which shall at any time during the said

---

per ton, then the rent or royalty to be paid in respect of such large or best coal shall be the sum of shillings, together with one third part of the sum such large or best coals shall sell for, by the ton, for the time being, above the sum of shillings per ton, and so in proportion for any greater or less quantity than a ton; *And* whenever and so often as it shall happen during the said term, that the regular market price of lumps or round coal shall exceed the sum of shillings per ton, then the rent or royalty to be paid in respect of every such ton of lumps or round coal so to be raised or gotten from and out of the said mine, shall be the sum of shillings, together with one-third part of the sum which such lumps or round coal shall sell for by the ton, for the time being, above the said sum of shillings per ton; and whenever and so often as it shall happen during the said term, that the regular market price of coke shall exceed the sum of shillings and pence per sack, then the rent or royalty to be paid in respect of every sack of coke made upon the said hereditaments, shall be the said sum of pence per sack, together with one-sixth part of the sum which such coke shall sell for by the sack, for the time being, beyond the said sum of shillings and pence per sack, and so in proportion for a less quantity than a sack; AND ALSO YIELDING AND PAYING unto the said [*lessor*], his heirs and assigns, the further rent or royalty after mentioned, (that is to say); the sum of one penny per ton for all slack stock that shall be raised and gotten during the said term from and out of the said mine, (except only such part thereof as shall be

Royalty of one penny per ton for slack;

term, fetch or be sold by the said [*lessee*], his executors, administrators, and assigns, for shillings per ton; *And also* (*c*) every quarter of a year, on each of the four quarterly days of payment hereinbefore mentioned, until the veins or strata of coal hereinbefore demised, shall in the quarter ending on the quarterly day of payment for the

OF LANDS AND COAL MINES.

Additional reddendum in respect of deficiency of quantity of coals raised.

---

consumed on the premises in manner hereinafter mentioned), and so in proportion for any less quantity than a ton, each ton to be of the contents aforesaid; *And also* the sum of shillings and pence for every thousand of bricks, tiles, or quarries, to be made from the said common brick clay hereby demised, except such part of the said bricks and quarries as shall be used and employed in and about the erections now standing, or hereafter to be erected on the said premises, in or about the working or converting of the coal hereby demised, and so in proportion for any less quantity than a thousand."

—*s.* —*d.* per thousand for bricks.

(*c*) This reservation is generally more fully given, as follows:

"*And* in case during any quarter of a year during the first year of the said term, to be computed from the day of in the present year, the quantity of best or large coal which shall have been actually raised and gotten from and out of the said mine hereby demised, shall not amount to the full quantity or weight of tons, as stipulated in the covenant hereinafter in that behalf contained, but the quantity which shall have been actually so raised and gotten within each or any of those quarters of a year shall have fallen short of the aforesaid stipulated quantity in weight of tons, then YIELDING AND PAYING unto the said [*lessor*], his heirs and assigns, for and during the said first year of the said term (over and above and in addition to the said mine rents, royalties, or reservations hereinbefore reserved for and upon, or in respect of the quantity of such best or large coal which shall happen to have been actually raised and gotten in each or any of those quarters of a year), so much, and such additional and further sum of money (exclusive of the said surface rent) as the same mine rents, royalties, and reservations, according to, and under the fluctuating reservations in price hereinbefore

If quantity of coal warehoused in any quarter of first year falls short of —— tons.

OF LANDS AND COAL MINES.

time being, be incapable of producing tons of coals per week, on an average, during such quarter, such further rent or sum of money as, with the rents, royalties, or sums of money hereinbefore made payable for or in respect of such coals, will amount in such quarter to the sum of pounds, all which said additional rents, royal-

to be paid quarterly.

---

contained thereof, shall or may from time to time amount unto, upon the deficiency or failure between the quantity or weight of such best or large coal that shall have been actually raised and gotten by the said [*lessee*], his executors, administrators, or assigns, and the said specific quantity of tons, stipulated to be raised and gotten by the said [*lessee*], his executors, administrators, or assigns as aforesaid, in each or any of those quarters of a year; *And* in case, in any quarter of a year during the second year of the said term, to be computed from the day of , in the year , the weight or quantity of best or large coal that shall be actually raised or gotten from and out of the said mine hereby demised, shall not amount to the full quantity or weight of tons, as also stipulated in the said covenant hereinafter in that behalf contained, but the quantity or weight which shall have been so actually raised and gotten within each or any of those last mentioned quarters of a year shall have fallen short of the last mentioned stipulated quantity or weight of tons, then also YIELDING AND PAYING unto the said [*lessor*], his heirs and assigns, during the continuance of the said term (over and above, and in addition to the said mine-rents, royalties, or reservations hereinbefore reserved and made payable for and upon, or in respect of the quantity of such best or large coal which shall happen to have been actually raised and gotten in each or any of such last mentioned quarters of a year), such further and additional sum of money (exclusive of the said surface rent), as the same mine-rents, royalties, or reservations, (according to, and under the fluctuating reservations in price hereinbefore contained thereof,) shall or may from time to time amount unto, upon the deficiency or failure between the quantity or weight of such best or

Reddendum for deficient quantity in second year.

ties, or sums so reserved as aforesaid, are to be paid and payable by four equal quarterly payments in each and every year of the said term, (that is to say,) on the day of , the day of , the day of , and the day of , the first quarterly payment whereof to begin

---

large coal that shall have been actually raised and gotten, and the last mentioned specific quantity of tons, stipulated to be raised and gotten by the said [*lessee*], his executors, administrators, or assigns, in each or any of those last mentioned quarters of a year; *And* in case, in any quarter of a year during the residue of the term hereby granted, to be computed from the day of , in the year , and until the said mines shall be incapable of producing tons per quarter (such incapacity to be ascertained by arbitration or umpirage, in manner hereinafter mentioned for the determination of disputes between the said parties hereto), the quantity or weight of best or large coal that shall have been actually raised and gotten from and out of the said mine hereby demised, shall not amount to the full quantity or weight of tons, as further stipulated by the covenant hereinafter in that behalf contained, but the quantity and weight which shall have been so actually raised and gotten within each or any of those last mentioned quarters of a year, shall have fallen short of the said last mentioned stipulated quantity or weight of tons, then further YIELDING AND PAYING unto the said [*lessor*], his heirs and assigns, during the continuance of the said term (over and above, and in addition to the mine rents, royalties, or reservations hereinbefore reserved and made payable for and upon, or in respect of the quantity of such best or large coal which shall happen to have been actually raised and gotten in each or any of those last mentioned quarters of a year), so much, and such further and additional sum of money (exclusive of the said surface rent) as the same mine-rents, royalties, or reservations (according to, and under the fluctuating reservations in price hereinbefore contained thereof) shall or may from time to time amount

Reddendum for deficiency of coals during residue of the term.

OF LANDS AND COAL MINES.

and be made on such of the said quarterly days or times as shall first happen after getting, raising, and selling such coals as aforesaid respectively (*d*); AND

---

unto, upon the aforesaid deficiency or failure between the quantity or weight of such best or large coal that shall have been actually raised and gotten, and the last mentioned specific quantity of tons, stipulated to be raised and gotten by the said [*lessee*], his executors, administrators, or assigns, in each or any of those last mentioned quarters of a year; *Nevertheless* he the said [*lessee*], his executors, administrators, or assigns, in case of his or their having made up or paid for such deficiency or failure in the several and respective quantities of tons, tons, and tons, in and by these presents stipulated to be raised and gotten in each and every quarter of a year, during the several and respective years or periods hereinbefore in that behalf mentioned, shall be at liberty from time to time, in any succeeding quarter of a year, when and as the quantity or weight which shall be actually raised and gotten in each or any of those succeeding quarters of such year shall exceed the several and respective specific and stipulated quantities hereinbefore mentioned, to make up and reimburse himself and themselves such sum or sums of money which shall have been paid for such deficiency or deficiencies in quantity as aforesaid, by selling and disposing of such excess in quantity or quantities of the said best or large coals, as, at the rate of the aforesaid fluctuating rents, royalties, or reservations in price hereinbefore reserved and made payable, shall amount to the sum or sums of money he or they shall have paid for and upon, or in respect of any short or deficient quantity of such best or large coals in any preceding quarter of a year, during the several or respective years or periods hereinbefore mentioned of the said term hereby granted, and without paying or being liable to pay any rent or royalty for such excess or quantity."

But deficiency paid for in any quarter may be worked in any succeeding quarter without further payment.

(*d*) The following clauses are here often inserted:

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that none of the

Royalty to cease during

ALSO YIELDING AND PAYING during the said term, over and above the said yearly rents and royalties hereinbefore reserved, unto the said [*lessor*], his heirs and assigns,

Further reddendum of a

---

rents, royalties, or reservations hereinbefore reserved in respect of the said hereditaments hereby demised, or intended so to be, (except the said surface rent), shall be payable by the said [*lessee*], his executors, administrators, or assigns, during such period as the working of the said mine shall be suspended or stopped by reason of any fault or failure in the said mine, or by any accident by fire or water, or any other inevitable accident, the said [*lessee*], his executors, administrators, or assigns, during such suspension or suspensions, stoppage or stoppages, using his and their utmost endeavours to remove and remedy such hindrance or cause of suspension or stoppage; and that any disagreement arising between the said parties, as to what shall be deemed such fault or failure as aforesaid, or otherwise, respecting any stoppage or suspension of the said mine, shall be referred to arbitration in manner hereinafter mentioned; PROVIDED FURTHER, that in case a partial stoppage or suspension only shall happen by reason of any such fault, failure, or inevitable accident, then the said [*lessee*], his executors, administrators, and assigns, shall work such pits or shafts to which such fault or failure, accident, suspension, or stoppage shall not extend, and shall pay the said rents, royalties, and sums of money hereinbefore reserved, only in proportion to the extent of the works of the said mines and colliery to which such fault or failure, accident, and consequent suspension and stoppage shall not extend, such proportion (in case of the disagreement of the said parties respecting the same,) to be ascertained by reference to arbitration, in pursuance of the clause for that purpose hereinafter contained; PROVIDED ALSO, that if any such accident or accidents by fire, water, or otherwise, or any such suspension or stoppage, shall arise or be occasioned by any improper act, neglect, or wilful default of the said [*lessee*], his executors, administrators, or assigns, or his agents, servants, or workmen, that then and in every such case the said rents, royalties, and sums of money, shall

the suspension of works by accident, &c.

In case of partial failure, proportional rent to be payable.

If suspension happen by default of lessee, whole rent to be payable.

OF LANDS AND COAL MINES.

rent for every sack of coke.

the sum of pence of like lawful money, for each and every sack of coke, (and so in proportion for any greater or less quantity than a sack) which he the said [*lessee*], his executors, administrators, and assigns, shall from time to time during the continuance of this demise, make from the coal which shall be raised or got out of the mines and other pits hereby demised, and which shall be sold or disposed of from the said premises, by the said [*lessee*], his executors, administrators, or assigns, and the same additional rent hereby lastly reserved, to be paid and payable quarterly, on such of the said quarter days or times of payment as shall first and next happen after making or converting the said coal into coke as aforesaid, and selling the same as aforesaid; AND the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will yearly and every year during the said term of years hereby demised, well and truly pay or cause to be paid unto the said [*lessor*], his heirs or assigns, the said yearly rent or sum of pounds, on the days and times, and in the manner hereinbefore appointed for payment thereof, without any default, deduction, or abatement whatsoever (except as aforesaid); *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, on each and every of the said quarter days, make up and deliver to the said lessor, his heirs and assigns, accounts in writing of all the coal and coke which he or they shall have then obtained, raised, and sold, in, from, or out of the said mines and pits hereby demised, and shall and will then pay the full amount of such rents and royalties aforesaid, to the said [*lessor*], his heirs and assigns, free from all deductions, outgoings, and abatements whatsoever; *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall

Covenant by lessee to pay rents;

will deliver account of coals sold.

Covenant to pay taxes,

---

continue to be paid by the said [*lessee*], his executors, administrators, or assigns, in the same manner as the same rents, royalties, and sums of money would have been payable in case such stoppage had not taken place."

and will from time to time, and at all times during the said term hereby demised, well and truly pay, satisfy, and discharge all taxes, rates, assessments, and other impositions whatsoever, which now are assessed or imposed, or which at any time or times during this demise shall be assessed or imposed upon the said messuages, pieces, or parcels of land and premises hereby demised, or any part thereof, or upon the said [*lessor*], his heirs or assigns, in respect thereof; AND that he the said [*lessee*], his executors, administrators, and assigns, shall and will from time to time, and at all times during the said term hereby granted, well and sufficiently repair, amend, maintain, scour, cleanse, preserve, and keep in good, sufficient, and tenantable order and repair, all the gates, rails, stiles, hedges, ditches, mounds, and fences, of and belonging to the said pieces or parcels of land and premises hereby demised; *And also*, all and every the furnaces, fire engines and iron works, dwelling-houses, and other erections and buildings, which now are standing or being, or which shall or may at any time hereafter during this demise, be erected or built by the said [*lessee*], his executors, administrators, and assigns, on the the same premises, or any part thereof, and shall and will at the end, expiration, or other sooner determination of this demise, quit, leave, surrender, and yield up the same erections, buildings, furnaces, fire engines and premises, into the hands and quiet possession of the said [*lessor*], his heirs and assigns, without any denial, refusal, or delay whatsoever; *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, at his and their own costs and charges, immediately, or as soon as may be after the commencement of this demise, begin and proceed upon opening and sinking pits or mines, for the purpose of searching for and procuring coal and ore in and under the said pieces or parcels of land and premises hereby demised and held, and will use his and their best and utmost endeavours for the discovery of the mines and veins therein; AND shall and will continue to work, raise, and get the same, and the produce thereof, so and in such manner as that he and they shall and will during the continuance of the said term hereby granted, until the veins or strata of coal hereinbefore demised shall be incapable of

and will keep premises in repair.

Covenant by lessee that he will open mines,

and raise —— tons of coal per week.

OF LANDS AND COAL MINES.

producing the same, get from and out of the said mines, pits, and veins hereby demised, or use his and their best and utmost means and endeavours to raise and get tons of coal at the least in each and every week, each ton to weigh and contain twenty hundredweight, and each hundred weight one hundred and twenty pounds as aforesaid, or otherwise shall and will well and truly pay, or cause to be paid, unto the said [*lessor*], his heirs and assigns, pounds of lawful money of Great Britain and Ireland, by way of rent for the said mines and pits hereby demised, at the end of every quarter, during such part of the said term of years, in which the said [*lessee*], his executors, administrators, or assigns, shall not raise and get such quantity of coal per week as last aforesaid, without any default, deduction, or abatement whatsoever, and so in proportion for or in respect of any less quantity which he or they shall raise and procure, and the same to be payable and paid on the quarterly days in every year, at the time, and in the manner hereinbefore mentioned for payment of the said yearly rent or sum of pounds hereby reserved; *And further*, that he the said [*lessee*], his executors, administrators, and assigns, and his and their servants, agents, and workmen, shall and will from time to time, and at all times during this demise, work the said mines and veins hereby demised, in and under the aforesaid lands and premises, and every part thereof, in a proper and workmanlike manner, and get and clear the respective mines and veins in the usual and best way and manner in which they are performed in other works of the same or like kind in the neighbourhood; and shall not nor will at any time during the said term, or at the end or expiration thereof, wilfully or negligently carry or work the new pits or mines so near to the old works adjoining thereto, as to endanger the pillars or partitions between the same, or so as to let the water out of the old gobs or deads adjoining, into any part of the said works; *And* shall or will level the land or ground in or about the pits or mines, as and when the same shall be exhausted and worn out, and discontinued; *And also* shall and will, if required by the said [*lessor*], his heirs or assigns, fill up all and every the said pits or mines which shall be so exhausted,

Covenant by lessee to work the mines in a proper manner;

and will not work too close to the pillar;

to level the ground, and fill up the useless pits.

or arch over the same with bricks in a workmanlike manner, and bury the offal, stone, spoil, or rubbish, which shall be raised or gotten out of the said mines, and cover the pits or pits' mouths over with good earth or soil (if to be had upon the spot), for cultivation, and leave and yield up the said lands under which the said mines shall have been worked or opened, and finished or discontinued by the said [*lessee*], his executors, administrators, and assigns, and every part thereof, in good and tenantable condition, so as the same shall be fit for agriculture or pasture (*e*); PROVIDED ALWAYS, and it is hereby agreed, that it shall and may be lawful to and for the said [*lessor*], his heirs or assigns, or his or their bailiffs, servants, agents, or workmen, at all times in the day time, whilst the said mines shall continue working, to make use of the ropes, gins, and other engines and materials employed in working the said mines, to go into any pit or pits, and afterwards to be drawn out,

Power for lessor to inspect the management of working the mines;

(*e*) The following powers are here frequently inserted:

"PROVIDED ALSO, and it is hereby agreed and declared between and by the said several parties hereto, that it shall be lawful for the said [*lessor*], his heirs and assigns, to enter into and upon the said hereditaments, mines, and premises, with all necessary agents, workmen, and miners, for the purpose of working, raising, getting, and carrying away, selling, and disposing of the said hereinbefore excepted mines and premises, and to work, dig, get, break up, carry away, convert, sell, and dispose of all the excepted mines of coal and ironstone, and other mines, minerals, and clay, at his, their, and any of their will and pleasure, and for those purposes to make use of and deepen all or any of the pits or shafts which are now made or sunk, or may hereafter be sunk by him the said [*lessee*], his executors, administrators, or assigns, or any part or parts of the said hereby demised hereditaments, when and as soon as he the said [*lessee*], his executors, administrators, or assigns, shall have worked out the said pits and discontinued using such shafts; and to erect, build, and construct all such furniture, kilns, works, machinery, and other erections and conveniences, as hereafter he or they shall think necessary for any of the purposes aforesaid; *But* nevertheless so that

Liberty to lessor to work the excepted mines.

To use shafts which may have been disused by lessee;

making an abatement in

OF LANDS AND COAL MINES.

at his, their, or any of their free wills and pleasure, and to view, inspect, and enquire into the manner of working the same, and make such other observations and examinations into and concerning the same as they or any of them shall think proper; and in case the said [*lessee*], his executors, administrators, or assigns, shall be found to be using the said mine in an improper or unworkmanlike manner, then and in such case it shall be lawful for the said [*lessor*], his heirs or assigns, to give notice in writing to the said [*lessee*], his executors, administrators, or assigns, or his or their known or authorized agent or agents, to stop and discontinue the further working of the said mines, until full satisfaction and amends shall be made for the damage, loss, or injury, which shall have been sustained or occasioned by or to the said [*lessor*], his heirs or assigns, by reason of the said mines or veins being so improperly worked or used, such satisfaction and amends to be ascertained and awarded by referees or arbitrators, to be appointed in

and if improperly worked, to give notice to lessee to stop working until satisfaction;

---

surface-rent for land used by lessor.

the said [*lessor*], his heirs or assigns, entering upon the excepted mines and premises, shall make and allow from time to time a fair and reasonable abatement in the said surface rent hereby reserved, for so much of the said land and hereditaments as shall be so taken and used for any of the purposes aforesaid, and shall also make and allow a fair and reasonable compensation to the said [*lessee*], his executors, administrators, or assigns, for all such loss, damage, hindrance, or interruption, as shall happen, or be occasioned to him in the enjoyment and possession of the said hereby demised lands, mines, and premises, by reason of the exercise or use of all or any of the said excepted liberties, privileges, and authorities, and also for the coal which may be left by the said [*lessee*], his executors, administrators, or assigns, for the necessary support and preservation of the pits for the use of the said [*lessor*], his heirs or assigns; such abatement and compensation to be ascertained by the said parties hereto, and in case of their disagreement respecting the same, by reference to arbitration, in pursuance of the clause hereinafter to that effect contained."

manner hereinafter mentioned, in case the said parties hereto, or their respective heirs, executors, administrators, or assigns, shall disagree about the same (*f*); *And that* he the said [*lessee*], his executors, administrators, and assigns, shall and will cause and procure the weights and quantities of such coal and ore to be from time to time entered in a convenient and proper book or books, to be provided and kept for that purpose, to which book or books he the said [*lessor*], his heirs and assigns, or any of them, shall at all seasonable times have free access to inspect and examine the same, with liberty to take extracts and copies therefrom and thereof, and shall or may, if they shall think fit, be present at all times when the said coal and ore shall be so weighed as aforesaid; PROVIDED ALSO, and it is hereby declared and agreed by and between the said parties to these presents, that the several royalties and payments for coal and mines, at the days and times and in manner aforesaid, shall from time to time be made in lawful money of Great Britain and Ireland, or in such good bills upon London, to be indorsed by the said [*lessee*], his executors, administrators, or assigns, as are usually received

Lessee to provide books to enter quantity of coal, &c.

Liberty for lessor to inspect books.

Proviso that royalties shall be paid in money, goods, or bills on London.

---

(*f*) The following clauses are also frequently inserted:

"*And also,* that he the said [*lessee*], his executors, administrators, and assigns, shall and will during the continuance of the said term hereby granted, according to the best of his and their judgment, skill, and discretion, continue uninterruptedly, (suspensions and failures by reason of any fault or failure in the mine, or other inevitable accident, only excepted,) to work, manage, get, raise, carry away, sell, and dispose of the said mine of coal and premises hereby demised, and proceed to bore, search for, dig, and drive such other pits, shafts, levels, and openings, as may be deemed requisite, and likely to tend to the discovery, getting, and winning, of the said mine of coal and common brick clay, for or on account of which a rent, or royalty, or reservation, is hereby made payable; *And* shall and will from time to time during the said term, raise and draw the slack that may be gotten in the said

To work mine uninterruptedly;

to raise slack;

OF LANDS AND COAL MINES.

and paid by colliers, or others of like employment or occupation, at settling their quarterly accounts, so as none of such bills shall have more than two months to run at the times of giving the same; *And moreover*, the said [*lessee*] doth hereby COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that it shall be lawful for him and them, or his or their servants or agents, at any time or times within the last three months next preceding the expiration or other determination of the said term of years hereby demised, to affix or set up a printed or other notice, or board, upon any conspicuous part of the said demised premises, that the same will be to be letten at the expiration of the said term; *And also* at any convenient time in the day time, to enter into and upon the said demised premises, or any part thereof, to show the same to any person or persons who shall express a desire to become a tenant or tenants, or take a demise or lease thereof; *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall and will at the end or expiration or other sooner determination of the said term hereby demised, yield, quit, and surrender up to the said [*lessor*], his heirs

Lessor may affix board on the premises for letting the same;

and may shew them to persons.

That lessee will quit at the expiration of term.

---

mine, or so much thereof as may be necessary to preserve the said mine clean, and not exposed to any damages by fire, and for the purposes aforesaid; *And also*, to the intent that the said works may be carried on with full and unabated vigour and effect during the continuance of the said term, that he the said [*lessee*], his executors, administrators, or assigns, shall and will constantly employ in and about the said mines and works, a proper number of good and skilful miners, colliers, workmen, servants, and labourers, and also of horses, cattle, carts, carriages, engines, machinery, utensils, tools, and other articles requisite for the carrying on and working of the said mine, in such a workmanlike manner as shall tend to the mutual benefit, profit, and advantage of the said several parties hereto, or their respective representatives and assigns; *And also*, shall and will, at his and their own costs and charges, at all times during the continuance of the said term, maintain and keep the hereditaments and premises hereby

to employ a proper number of workmen;

to keep premises and machinery in repair;

or assigns, all and singular the said lands, mines, and premises hereby demised, with the works, drains, levels, soughs, watercourses, shafts, air and other pits, waggon, rail-roads, or other ways therein or thereupon being, appertaining, and belonging in all things; AND it is hereby further agreed and declared by and between the said parties hereto, that the present stock of tools, iron work, and all other materials now in and upon the said demised premises, and which are contained or set forth in the schedule or inventory hereunto annexed, with the value thereof affixed to the same, shall, during the said term of years hereby granted, be used and employed upon the said premises by him the said [*lessee*], his executors, administrators, or assigns, he or they leaving the same at the end or other sooner determination of this demise, in as good plight and condition, and of as much value as the same now are (reasonable use and wear thereof only excepted), or paying for the same according to a fresh valuation thereof, to be made in manner hereinafter mentioned, at the option of the said [*lessor*], his heirs or assigns; AND it is further agreed, that the said [*lessor*], his heirs and assigns, shall have the option and privilege of becoming the purchaser or purchasers of the stock of tools and materials which shall belong to him the said [*lessee*], his executors, administrators, or assigns,

Lessee to have the use of tools &c. during the term.

Lessor to have the option of purchasing the tools, &c. of lessee at the end of the term.

---

demised, and also all and singular the engines, machinery, whimseys, gins, shafts, erections, and buildings, now standing and being, or at any time hereafter during the said term to be erected and built upon the said hereditaments and premises, or from time to time substituted in the place thereof, in good and tenantable order and repair; *And* shall and will, at the expiration or other sooner determination of the said term, deliver up the pits and shafts made and sunk, or hereafter to be made and sunk, in or upon the said hereditaments, in a good and serviceable condition, and in good repair, without filling up or otherwise injuring the same, or rendering them in anywise useless and unserviceable for working and getting the said mine hereby demised, or the mines of coal and iron stone, and other mines hereinbefore excepted out of this present demise."

to deliver shafts in good condition.

OF LANDS AND COAL MINES.

and which shall remain upon the said premises at the expiration of the said term, at a fair valuation, to be ascertained by two indifferent persons, one to be chosen by the said [*lessor*], his heirs or assigns, and the other by the said [*lessee*], his executors, administrators, or assigns, or by an umpire, to be appointed by such two persons previously to their going upon such valuation; or in case the said [*lessor*], his heirs or assigns, shall not choose to take the same, he the said [*lessee*], his executors, administrators, and assigns, shall and may take and carry away the same at his and their pleasure: AND the said [*lessor*] *Doth* hereby for himself, his heirs and assigns, hereby COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, by these presents, in manner following, (that is to say); that he the said [*lessor*], at the time of the sealing and delivery hereof, hath full, lawful, and sufficient power and authority to grant and demise the pieces or parcels of land, pits, mines, and premises hereby demised, or intended so to be, at, for, and upon the rents, terms, and conditions hereinbefore contained respecting the same, and according to the true intent and meaning of these presents; *And* that it shall be lawful for the said [*lessee*], his executors, administrators, and assigns, he and they paying the yearly and other rents, royalties, and payments hereinbefore respectively reserved or made payable, at the several days and times hereinbefore appointed or mentioned for payment thereof, and observing, performing, fulfilling, and keeping all and singular the covenants, provisoes, conditions, stipulations, and agreements in these presents observed, mentioned, and contained respectively, which on the tenant's part and behalf are or ought to be observed, performed, and fulfilled, paid, and kept respectively, peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said pieces or parcels of land, mines, and pits hereby demised, or intended so to be; together with the several powers, liberties, privileges, matters, and things hereby respectively granted, or intended so to be, and the several engines, furnaces, erections, buildings, and works, now or hereafter to be erected, built, or set up on the said lands and premises, for and during the aforesaid term of

years, without any let, denial, hindrance, molesta-

If lessor refuse, lessee to take them.

Covenant by lessor that he has right to grant the lease.

Covenant by lessor for quiet enjoyment.

tion, or interruption of, from, or by, or under him the said [*lessor*], his heirs or assigns, or any person or persons now or hereafter lawfully and rightfully claiming or possessing any estate, right, title, or interest by, from, or under him or them, or by, from, or under his or their acts, means, assent, consent, or procurement: (*Proviso for re-entry on the non-payment of rent, or on the non-performance of covenants, as ante*, p. 42): PROVIDED ALSO, and it is hereby agreed and declared between and by the said parties hereto, that if at any time during the continuance of the said term of years hereby granted, or after the expiration or sooner determination thereof respectively, any variance, controversy, doubt, dispute, or question shall arise between the said parties hereto, or their respective representatives or assigns, touching or relating to these presents, or any clause, proviso, covenant, matter, or thing herein contained, or as to the construction of the same, or in any respect relating to the same premises hereby demised and granted, the same shall be, and are hereby agreed to be referred to arbitration and umpirage in manner following (that is to say); in any such cases the parties desiring and intending to refer the same to arbitration, shall, within one calendar month after such question, doubt, dispute, or difference shall have arisen, give notice in writing to the other of the said parties, or some or one of them, by leaving such notice in writing at his, her, or their last or most usual place or places of abode or residence, naming in such notice the person who is or shall be chosen by him, her, or them, as his, her, or their arbitrator, in the matter, point, or question in dispute intended to be referred to arbitration, and requiring the other party or parties to name or choose his, her, or their arbitrator within two calendar months after the time of serving such notice; *And* if within the period of two calendar months, to be computed as aforesaid, the person or persons upon whom, or at whose place or places of abode or residence such notice shall be so served or left as aforesaid, shall not have given unto the person or persons so serving or leaving the same, a notice in writing to be served or left as aforesaid, containing the nomination and appointment of an arbitrator on his or their

Arbitration clause.

OF LANDS AND COAL MINES.

part, then it shall be lawful for the person or persons desiring such reference to name a second arbitrator, who is hereby impowered or enabled to act in every respect, and in the same manner, as if he had been named and appointed by the party refusing, neglecting, or omitting to name and appoint another arbitrator as aforesaid; *And* in every such case, the said two arbitrators shall, before they enter into the matter or business so referred to them, and within two weeks after they shall have been so named and appointed, nominate and appoint some person to be umpire, and finally to decide in case of their disagreement; *And* it is hereby further agreed between the said several parties hereto, that when and so often as any dispute or disputes shall arise between the said parties, all and every the book and books of account, writing and writings, and all other papers in anywise relating to, or connected with such dispute or disputes, in their, or any or either of their custody or power, shall be produced and delivered to the said arbitrators or umpire for their inspection and guidance in adjusting and settling such dispute or disputes; *And it is hereby further agreed* between the said parties hereto, that the submission hereby made, shall or may be made a rule of his Majesty's Court of King's Bench at Westminster; *And* that in case the same shall be required by either of the said parties in difference, the said respective parties shall execute arbitration bonds to each other; and in the conditions thereto respectively, shall be clearly set forth and contained the question, point, or matter in difference, and the time or period of making and delivering such award or umpirage, and also the assent of the said parties, that the submission to such award or umpirage shall be final and conclusive, and be made a rule of his Majesty's said Court of King's Bench at Westminster. IN WITNESS, &c.

FINISHING LEASE.

FINISHING LEASE *granted by a Nobleman, Description of Parcels by a Plan,* COVENANTS *by Lessor to* FINISH HOUSE, *and not to make* BOW WINDOWS, *and that he will* GIVE NOTICE *to Lessor of all* ASSIGNMENTS.

THIS INDENTURE, made the day of , BETWEEN the right honorable Robert Earl G. [*lessor*], of the one part, and [*lessee*] of, &c. of the other part; WITNESSETH, that in consideration of the costs and charges which the said [*lessee*] hath been at in erecting and building the messuage or tenement, erections, and buildings, erected and built upon the ground hereinafter demised, as also in consideration of the yearly rent and covenants hereby reserved and contained by and on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, to be paid, observed, and performed, HE the said Robert Earl G. *Hath* demised, leased, and set, and by these presents *Doth* demise, lease, and set, unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT piece or parcel of ground situate, lying, and being in the parish of St. George, Hanover Square aforesaid, on the north side of Ecclestone Place, and fronting towards the south on the same place, and abutting and adjoining towards the north on ground in the occupation of Nathaniel Silverthouse, towards the west on ground in the occupation of William Fletcher, and towards the east on ground in the occupation of George Harrison, which said piece or parcel of ground hereby demised, doth contain in breadth from east to west, at the south or front thereof, thirty feet of assize or thereabout, &c. &c. and which said piece or parcel of ground hereby demised, is more particularly delineated and described in the plan drawn in the margin of this indenture, together with the messuage or tenement, and

Parties.

Testatum, whereby, in consideration of costs of building house,

lessor demises

parcels.

Reference to plan.

FINISHING LEASE.

all other erections and buildings now built or in building, or that shall or may during the term hereby granted, be erected and built on the said ground hereby demised, or on any part thereof, and all areas, ways, paths, passages, lights, easements, waters, watercourses, and appurtenances whatsoever, to the said piece or parcel of ground, messuage or tenement, and premises, belonging or in anywise appertaining; TO HAVE AND TO HOLD the said piece or parcel of ground, messuage or tenement, erections, buildings, and all and singular the premises hereinbefore mentioned and described, and intended to be hereby demised, with their and every of their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the feast day of the annunciation of the blessed Virgin Mary, which was in the year of our Lord , for and during the term of years from thence next ensuing, and fully to be complete and ended; YIELDING AND PAYING therefore yearly and every year, unto the said Robert Earl G., his heirs and assigns, during all the said term of years hereby granted, the rent or yearly sum of pounds of lawful money of Great Britain and Ireland, free and clear of and from all parliamentary, parochial, and other rates, taxes, charges, and assessments whatsoever, taxed, charged, or assessed, or that shall or may at any time or times hereafter, during the said term hereby granted, be taxed, charged, or assessed, on the premises hereby demised, or on any part thereof, or on the said rent or yearly sum of pounds hereinbefore reserved, on the four most usual feasts or times of payment of rent in every year, (that is to say;) the Nativity of St. John the Baptist, St. Michael the Archangel, the birth of our Lord Christ, and the Annunciation of the blessed Virgin Mary, in every year, by even and equal portions; AND he the said [*lessee*], for himself, his executors, administrators, and assigns, doth COVENANT, promise, and agree, to and with the said Robert Earl G., his heirs and assigns, by these presents, in form following, (that is to say;) that he the said [*lessee*], his executors, administrators, and assigns, shall and will well and truly pay or cause to be paid, unto the said Robert Earl G., his heirs and assigns, the said rent or yearly sum of pounds,

Habendum.

Reddendum.

Covenants by lessee to pay rent,

FINISHING LEASE.

hereinbefore reserved as aforesaid, free and clear of and from all rates, taxes, charges, and assessments, in manner and proportion, and on the days and times hereinbefore limited and appointed for payment thereof, according to the reservation aforesaid, and the true intent and meaning of these presents; *And also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will, at his or their own proper costs and charges, within six calendar months from the date hereof, well and substantially and in a workmanlike manner, complete and finish the said messuage or tenement, and the erections and buildings now erecting and building upon the said piece or parcel of ground hereby demised, in every respect fit for habitation and use, *And* that there shall not be any bow window or other projection in front of the said messuage or tenement hereby demised, *And* that he the said [*lessee*], his executors, administrators, and assigns, shall and will at his and their own proper costs and charges, well and sufficiently repair, uphold, support, sustain, maintain, slate, tile, glaze, lead, paint, pave, purge, scour, cleanse, empty, and keep the said messuage or tenement, and all and every other the erections and buildings, now erecting and building, or that shall or may be erected and built on the said piece or parcel of ground hereby demised, or on any part thereof, and all the pavements, walls, fences, pipes, gutters, watercourses, privies, sinks, drains, and appurtenances belonging, or that shall or may be made or belong to the same premises, or any part thereof, in, by, and with all needful and necessary reparations and amendments whatsoever, when and so often as need or occasion shall require, during all the said term hereby granted, and the same premises with their and every of their appurtenances, being so well and sufficiently repaired, upheld, supported, sustained, maintained, slated, tiled, glazed, leaded, painted, purged, scoured, cleansed, emptied, amended, and kept, at the end or other sooner determination of the said term of years hereby granted, shall and will peaceably and quietly leave, surrender, and yield up, unto the said Robert Earl G., his heirs or assigns, together with all wainscot, window shutters, hearths, slabs, chimney pieces, and all other materials and things, which shall or may be fixed unto the same pre-

and will finish house;

and that there shall be no bow windows;

and will repair;

and quietly surrender the same.

FINISHING LEASE.

mises or any part thereof, that may be deemed as part of or belonging unto the freehold of the same; *And* that it

Power for lessor to enter.

shall and may be lawful to and for the said Robert Earl G., his heirs and assigns, and his and their agents, stewards, and surveyors, with or without workmen or others in his, their, or any of their company, twice or oftener in every year during the said term hereby granted, to enter into and upon the said demised premises, or any part thereof, to view, search, and see the state and condition of the repairs thereof, and of all such defects and wants of repair as shall be then and there on any such view found, to give or leave notice or warning in writing at or upon the said demised premises, or some part thereof, unto or for the said [*lessee*], his executors, administrators, or assigns, to repair and amend the same, within the time or space of three calendar months, then next following, within which said time or space of three calendar months, he the said [*lessee*], his executors, administrators, or assigns, shall and will well and sufficiently repair and amend the same accordingly; *And also* that he the said [*lessee*], his executors, administrators, or assigns, shall and will, at his or their own proper costs and charges, within the space of one calendar month, to be computed from the day of the date hereof, insure or cause to be insured from loss or damage by fire in some respectable insurance office in London or Westminster, the said messuage or tenement, erections, and buildings hereby demised, to the full amount of the value of the same messuage or tenement, erections, and buildings, or as near thereto as can be, according to the rules and regulations laid down by such office, and also shall and will from time to time, at his and their own like proper costs and charges, pay the duty chargeable on the sum of money so to be insured, and from time to time renew such insurance as often as it shall expire, and pay the duty chargeable thereon as often as it shall become due during the said term hereby granted; and that all monies which shall be received from time to time for or in respect of any such insurance as aforesaid, shall be forthwith applied and laid out in or towards rebuilding the said messuage or tenement, erections, and buildings hereby demised, or in repairing all such damages as shall

Covenant by lessee that he will insure;

FINISHING LEASE.

and will not carry on certain trades;

and give notice to lessor of assignment.

or may happen, or by reason or means thereof, and not otherwise or elsewhere; *And* that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will at any time during the said term hereby granted, use or exercise, or permit and suffer the premises hereby demised, or any part thereof, to be used or exercised by or for any of the arts or trades following, (that is to say;) a slaughterman, tallow-chandler being a melter of tallow, soap-maker, tobacco-pipe maker, brewer, distiller, farrier, pewterer, working brazier or blacksmith, or any other noisome or offensive manufactory whatsoever; *And* also that he the said [*lessee*], his executors, administrators, and assigns, shall and will upon every assignment of his or their interest in the said messuage or tenement and premises hereby demised, within one calendar month after the execution of such assignment, give notice in writing unto the said Robert Earl G., his heirs or assigns, or to his or their agent, steward, or receiver for the time being, of such assignment, and of the name or names and place or places of residence of the person or persons to whom the premises hereby demised, or any part thereof, shall be so assigned as aforesaid: (*Covenant by lessor for quiet enjoyment, as ante*, Vol. IV. p. 462.) IN WITNESS, &c.

TO PARTNERS.

LEASE *to* PARTNERS: COVENANTS *by Lessees to pay Rent and Taxes, and their Share of expenses of Party Walls, and of cleansing the Drains, and to empty them the Last Year of the Term; not to carry on certain Trades; not to make Bow Windows, or obstruct the Light of the Neighbours; that they will not assign without Notice, and will not assign, during the last seven Years without Consent;* POWER *to Lessor to fix Notices during the last Six Months of the Term;* POWER *to determine Lease at the End of Seventeen or Fourteen Years:* COVENANT *by Lessor to Repair the Outside of the Premises;* POWER *to Lessees to Purchase the Premises.*

Parties. Testatum.

THIS INDENTURE, made the day of , BETWEEN [*lessor*] of, &c. of the one part, and [*partners*] of, &c. of the other part; WITNESSETH, that in consideration of the rent hereby reserved, and of the covenants and agreements to be paid, observed, and performed by the said [*partners*], their executors, administrators, and assigns, HE the said [*lessor*], *Hath* demised and granted,

Demise

and by these presents *Doth* demise and grant, unto the said [*partners*], their executors, administrators, and assigns,

Parcels.

ALL THAT, &c. (*parcels*), *Together* with, &c. (*general words*); TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised, with the appurtenances, unto the said [*partners*], their executors, administrators, and assigns, from the day of , unto the full end and term of years thence next ensuing, and fully to be complete and ended, as tenants in common (*a*),

Habendum to partners for —— years.

---

Survivorship.

(*a*) If those words are not inserted, the lease would survive at law although not in equity. *Jeffreys* v. *Small*, 1 Vern. 217; *Lake* v. *Cradock*, 3 P. Wms. 158.

TO PARTNERS.

YIELDING AND PAYING therefore during the said term, unto the said [*lessor*], his heirs and assigns, the yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by equal quarterly payments, on the days following, (that is to say;) on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, without any deduction or abatement whatsoever for or on account of any rates or taxes, either parochial or parliamentary, or for or on account of any cause, matter, or thing whatsoever, and the first of the said quarterly payments to be made on the day of , now next ensuing; *And* the said [*partners*], do hereby for themselves, their heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessor*], his heirs and assigns, that they the said [*partners*], their executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the said term, well and truly pay or cause to be paid unto the said [*lessor*], his heirs and assigns, the said yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear of all taxes, charges, impositions, and deductions whatsoever; AND *also* shall and will well and truly pay and satisfy all taxes and charges, dues and duties whatsoever, parliamentary or parochial, except the land tax, which now are, or hereafter shall during the said term be payable in respect of the said messuage or tenement, lands, hereditaments, and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And also* that they the said [*partners*], their executors, administrators, and assigns, shall and will from time to time, and at all times during the said term, at their own costs and charges, well and sufficiently repair, support, maintain, uphold, amend, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, fences, ceilings, floors, partitions, drains, sewers, gutters, waydraughts, sinks, watercourses, pumps, pipes, privies,

Reddendum on the usual quarter days.

Covenant by lessees to pay rent,

and taxes;

to repair.

TO PARTNERS.

pavements, chimney-pieces, windows, window shutters, doors, locks, fastenings, and bells thereunto belonging, and also all such fixtures, improvements, and additions, as at any time during the said term, shall be erected and made, when, where, and as often as need shall be; *And* also that they the said [*partners*], their executors, administrators, and assigns, shall and will bear, pay, and discharge a reasonable share and proportion of the charges and expenses of making, supporting, and repairing all party walls and gutters, which now are or which shall at any time during the said term belong to the said premises, or any part thereof; *And* also shall and will contribute and pay a proportionate part or share of the costs and charges of cleansing and repairing the drains and watercourses which shall be used in common by them or any of them, or by the tenants or occupiers for the time being of the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, and the owners or occupiers of any other messuages or tenements or buildings adjoining to, or connected with the drains or watercourses of the said messuage or tenement and premises hereby demised, or intended so to be, according to the proportionate improved yearly value of the several premises using the same drains and watercourses; *And* shall and will during the last year of the said term, empty and cleanse the privies, drains, and cesspools of or belonging to the said messuage or tenement and premises hereby demised, or intended so to be; (*Covenant and provisoes for insurance, as ante, Vol. IV*, p. 458;) *And* that they shall not nor will at any time during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, the trades or businesses of tavern keeper, coffee house keeper, ale-house keeper, tallow and soap-chandler or boiler, victualler, furniture broker, butcher, baker, poulterer, sugar-baker, blacksmith, coachmaker, ironmonger, feather-bed maker, chimney sweeper, or any or either of them, or any other noisome, noxious, or stinking trade or business whatsoever, without the consent in writing of the said [*lessor*], his heirs and assigns, first had and obtained;

Covenant to pay share of expenses of party walls,

and of clearing the drains;

and will empty them the last year of the term.

Covenant not to carry on certain trades;

TO PARTNERS.

(*Covenant to leave premises in repair, as ante, Vol. IV,* p. 461); *And further,* that they the said [*partners*], their executors, administrators, or assigns, shall not nor will, at any time during the said term, make any bow window or other projection in front of the said messuage or tenement and premises hereby demised, or intended so to be, so as to obstruct the view from the adjoining house or houses belonging to the said [*lessor*], his heirs or assigns, or make any other alteration in the plan or elevation thereof, or by building or otherwise stop or obstruct any light belonging to any building on the ground adjoining or contiguous, or suffer any thing to be done which may tend to the annoyance or damage of the said [*lessor*], his heirs or assigns, or any of his or their tenants; *And also* that they the said [*partners*], their executors, administrators, or assigns, shall not sell, assign, underlet, or part with the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, for the said term hereby granted, or any part thereof, without giving a notice in writing to the said [*lessor*], his heirs or assigns, within one calendar month after any such assignment or underlease; *And* will not during the last seven years of the said term, sell, assign, underlet, or part with the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, for all or any part of the residue of the said term, without the consent in writing of the said [*lessor*], his heirs or assigns: AND *it is hereby agreed,* that it shall be lawful for the said [*lessor*], his heirs or assigns, or his or their agent or agents, at any time or times during the last six calendar months of the term hereby granted, to place or fix a printed or other notice on the door, or any window, or other conspicuous part of the said messuage or tenement and premises hereby demised, or intended so to be, to the purport and effect that the said premises are to let; *And* also during the said six months, at all seasonable and convenient times, to enter upon and shew the same to any person or persons who shall be desirous of viewing the same; (*Power to lessor to enter, and view state of repair, as ante, Vol. IV.* p. 461;) PROVIDED ALSO, that if the said [*partners*], their executors, administrators, or assigns,

and will not make bow windows, or obstruct the light of the neighbours;

and that they will not assign the term without notice, and will not assign during the last seven years without consent.

Power to lessor to fix notices during the last six months of the term.

Power to determine lease at

TO PARTNERS.

the end of seven or fourteen years.

shall be desirous of putting an end to the term hereby granted, at the end of the first seven or fourteen years thereof, and shall for that purpose deliver to the said [*lessor*], his heirs or assigns, or leave at his or their usual place or places of abode, six months previous notice in writing of such their desire, and shall pay or cause to be paid, all arrears of rent, and perform all and every the covenants hereinbefore contained on his or their part to be performed; *Or*, if the said [*lessor*], his heirs or assigns, shall be desirous of putting an end to the term hereby granted, at the end of the said seven or fourteen years, and shall for that purpose deliver to the said [*partners*], their executors, administrators, or assigns, or any of them, or leave at their or any of their usual place or places of abode, a similar notice to that which is hereinbefore provided to be given by the said [*partners*], their executors, administrators, or assigns, then and in either of such cases, immediately after the expiration of the said term of seven or fourteen years, this lease, and every clause and thing herein contained, shall cease, determine, and be utterly void, to all intents and purposes whatsoever; (*Power for lessor to enter upon the premises, on nonpayment of rent, &c. as ante*, Vol. IV. p. 462;) AND the said [*lessor*] doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT, promise, and agree, with and to the said [*partners*], their executors, administrators, and assigns, that he the said [*lessor*], his heirs or assigns, shall and will from time to time, and at all times during the said term, at his and their own costs and charges, well and sufficiently maintain, repair, keep, and uphold, all and singular the outside brickwork, plastering, slating, tiling, and other outer parts of the said messuage or tenement and premises hereby demised, or intended so to be, in good, substantial, and tenantable repair; *And* also shall and will paint or cause to be painted with two coats of good oil colour, the outer doors, gates, rails, window frames, and also the outside wood and iron work of the said premises, once in every four years of the said term, and in default thereof, after three months notice in writing having been given to him or them for that purpose, the said [*partners*], their executors, admi-

Covenant by lessor to repair the outside of the premises.

and paint outside.

TO PARTNERS.

nistrators, or assigns, shall or may, without prejudice to any remedy they may have by virtue of the covenant last aforesaid, repair or paint the said premises, and deduct and retain the costs and charges thereof from the yearly rent hereby reserved, the said [*partners*], their executors, administrators, or assigns, shewing or producing unto the said [*lessor*], his heirs or assigns, the vouchers or receipts for the money so expended by him or them as aforesaid; (*Covenant by lessor for quiet enjoyment, as ante*, Vol. IV, p. 462;) AND it is hereby further provided, that in case the said [*partners*], their executors, administrators, or assigns, shall at any time during the term hereby granted, be desirous of purchasing the inheritance of the said premises hereby demised, or intended so to be, and shall deliver three calendar months notice in writing unto the said [*lessor*], his heirs or assigns, of such their desire, or leave the same at his or their usual place or places of abode, then and in such case, he the said [*lessor*], his heirs or assigns, shall and will within three months after such notice in writing, at the costs and charges of the said [*partners*], their heirs, executors, administrators, or assigns, convey and assure the fee simple and inheritance of the said messuage or tenement and premises hereby demised, or intended so to be, unto the said [*partners*], their heirs and assigns, or as they shall direct, the said [*partners*], their executors, administrators, or assigns, paying unto the said [*lessor*], his heirs or assigns, at the time of the execution of such conveyance or assurance, the sum of pounds of lawful money of Great Britain and Ireland, as consideration money for such purchase. IN WITNESS, &c.

Power to partners to purchase the premises.

BY EXECUTORS.

LEASE *by* EXECUTORS *of a Dwelling House;* COVENANTS *by Lessee to pay Rent and Taxes; to Repair; to Paint outer Work; to Insure Premises to a certain Value, and expend the Money recovered on the Premises;* AGREEMENT *that if Lessee shall not Insure, Lessors may do so;* PROVISO *for Suspension of Rent in case of Fire:* COVENANTS *by Lessee not to Assign without License of Lessors; not to carry on certain Trades, and to leave Premises in Repair:* POWER *to Lessors to enter upon the Premises to view the State of Repair; Power for Lessors to enter upon the Premises, if Default shall be made in the Payment of Rent, or on the Non-performance of Covenants:* COVENANT *by Lessors for Quiet Enjoyment of Lessee:* PROVISO *for determining Lease on* BANKRUPTCY *of Lessee.*

THIS INDENTURE, made the day of ,

Parties.

BETWEEN [*executors*] of, &c. (executors named in, and appointed by, the last will and testament of [A. B.], late of, &c. deceased) (*a*), of the one part (*b*), and [*lessee*] of, &c. of the other part; WITNESSETH, that in consideration of the yearly rent hereinafter reserved, and the covenants and agreements hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be respectively paid, observed, and performed; THEY

Testatum, whereby executors demise premises to lessee.

---

(*a*) In some forms in print, the will of the testator, his death, and the probate of the will, are recited. This however is quite unnecessary.

Legatee.

(*b*) If the premises are specifically bequeathed, the legatee's assent must be obtained; and to prove this, it is usual to make him a party of the second part, and to make him concur in the demise.

the said [*executors*] *Have* demised and leased, and by these presents *Do*, &c. unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or tenement, situate, &c. *Together* with all and singular the outhouses, buildings, coach-houses, barns, stables, yards, gardens, cellars, areas, ancient and other lights, paths, passages, drains, sewers, pipes, waters, watercourses, and all and every other rights, privileges, easements, advantages, and appurtenances, to the said messuage or tenement belonging or in anywise appertaining, or with the same or any part thereof now or heretofore lawfully or usually used, holden, occupied, or enjoyed; TO HAVE AND TO HOLD the said messuage or tenement, and all and singular the premises hereby demised, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, for and during the term of years, to be computed from the day of the date of these presents, and from thenceforth next ensuing, and fully to be complete and ended; YIELDING AND PAYING yearly and every year during the said term, unto the said [*executors*], their executors, administrators, and assigns, the clear yearly rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the twenty-ninth day of September, the twenty-fifth day of December, the twenty-fifth day of March, and the twenty-fourth day of June in every year, free from all taxes, rates, and impositions whatsoever, whether parochial or parliamentary, either now or hereafter to be rated, taxed, and imposed upon the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or upon the landlord and tenant thereof for the time being, the first quarterly payment to be made on the day of now next ensuing; *And* the said [*lessee*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*executors*], their executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall and will, during the continuance of the said term, well and truly pay, or cause to be paid to the said [*executors*], their executors, administrators, and assigns, the said yearly

BY EXECUTORS.

Habendum to lessee for — years.

Reddendum.

Covenant by lessee to pay rent,

BY EXECUTORS. rent or sum of pounds of lawful money of Great Britain and Ireland, by four equal quarterly payments, on the days hereinbefore mentioned for payment thereof, free and clear from all taxes, charges, impositions, or deductions whatsoever; *And* also, shall and will well and truly pay and satisfy all taxes and charges, dues, and duties whatsoever, parliamentary or parochial, except the land-tax, which now are, or hereafter shall, during the said term, be payable in respect of the said messuage or tenement and premises hereby demised, or intended so to be, whether the same be rated or assessed on the landlord or tenant thereof; *And* also, that he the said [*lessee*], his executors, administrators, or assigns, shall and will, from time to time and at all times during the said term, at his and their own costs and charges, well and sufficiently repair, support, uphold, amend, maintain, glaze, secure, cleanse, and keep the said messuage or tenement and premises hereby demised, or intended so to be, and every part thereof, with the appurtenances, with the walls, ceilings, fences, floors, partitions, drains, sewers, gutters, way-draughts, sinks, watercourses, pumps, pipes, privies, pavements, chimney-pieces, windows, window-shutters, doors, locks, fastenings, and bells thereunto belonging, and all such fixtures, improvements, and additions, as at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And* shall and will, in every fourth year of the said term hereby granted, at his own costs and charges, paint, or cause to be painted, with two coats of good oil colour, all and every the outer doors, rails, window frames, and other the outside wood and iron work of the said messuage or tenement and premises; *And also*, that he the said [*lessee*], his executors, administrators, and assigns, shall and will forthwith, at his and their own proper costs and charges, insure, or cause to be insured, the said messuage or tenement and premises hereby demised, or intended so to be, from or against loss or damage by fire, in some or one of the respectable offices in London or Westminster for insurance against fire, in the sum of pounds at the least, and shall and will continue the same so insured during the said term; *And also* shall and will, when thereunto required by the

and taxes;

and repair;

and to paint outer work;

and to insure premises to the value of —*l.*

said [*executors*], their executors, administrators, and assigns, produce and shew to them, or any of them, the last receipt or receipts for the annual premium or duty payable for such insurance; *And* that in case the said messuage or tenement and premises, or any part thereof, shall at any time or times during the said term, happen to be burnt down or damaged by fire, in such case, and so often as the same shall happen, all and every such sum or sums of money as shall or may be recovered or received by the said [*lessee*], his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him or them in rebuilding or repairing the said messuage or tenement and premises hereby demised, or intended so to be, or such part or parts thereof as shall be burnt down or destroyed, or damaged by fire as aforesaid: And *it is hereby agreed and declared* between and by the parties hereto, that if at any time or times during the said term, the said [*lessee*], his executors, administrators, or assigns, shall neglect or refuse to effect such insurance as aforesaid; or, having effected such insurance, shall neglect or refuse to pay the premiums and duties for keeping the same on foot, required by the rules and regulations of the office or offices in which the same insurance shall be effected, then and in such case, and so often as the same shall happen, it shall and may be lawful for the said [*executors*], their executors, administrators, or assigns, to effect a proper insurance in any office or offices they shall think fit, or to pay the necessary premium or premiums, in the payment of which default shall have been made as aforesaid, and to charge and recover the costs and expenses of the same respectively, with interest for the same respectively, after the rate of five pounds for one hundred pounds, upon and from the said [*lessee*], his executors, administrators, and assigns, on the quarterly day hereinbefore mentioned immediately succeeding any such payment or payments: Provided always, and it is hereby agreed and declared between and by the said parties hereto, that in case the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, or any part thereof, shall, at any time or times during the said term, be entirely destroyed by fire or tempest, then and in such case, and so often as the same

BY EXECUTORS.

and lay out money received upon the premises.

Agreement that if lessee shall not insure, lessor may do so, and recover the expenses from the lessee.

Proviso for suspension of rent in case of fire.

BY EXECUTORS. shall happen, the yearly rent or sum of pounds hereinafter reserved, shall cease and be suspended during such time as the said messuage or dwelling house shall remain uninhabitable by reason of such destruction; *And* the said [*lessee*] doth hereby for himself, his heirs, executors, administrators, and assigns, further COVENANT, promise, and agree with and to the said [*executors*], their executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, shall not nor will, during the said term hereby granted, grant, demise, underlet, assign, or set over, or otherwise by any act or deed, procure, or cause the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, underlet, or assigned unto any person or persons whomsoever, without the consent in writing of the said [*executors*], their executors, administrators, and assigns, first had and obtained; *And* that he shall not nor will, at any time during the said term, carry on, or permit or suffer to be carried on, within or about the said messuage or tenement and premises hereby demised, or intended so to be, or any part thereof, the trades or businesses of tavern-keeper, coffee-house keeper, ale-house keeper, tallow or soap chandler or boiler, victualler, furniture broker, butcher, baker, poulterer, sugarbaker, blacksmith, coachmaker, ironmonger, feather-bed maker, chimney sweeper, or any or either of them, or any other noxious, noisome, or stinking trade or business whatsoever, without the consent in writing of the said [*executors*], their executors, administrators, and assigns, first had and obtained; *And further*, shall and will, at the expiration or other sooner determination of the said term, peaceably and quietly leave, quit, surrender, and yield up unto the said [*executors*], their heirs or assigns, together with all buildings, erections, and fixtures, now or hereafter to be erected or built therein or thereon, the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damage by fire only excepted; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall and may be lawful to and for the said [*executors*], their

Covenant not to assign without license of lessor.

Covenant not to carry on certain trades,

and to leave the premises in repair.

Power for lessor to enter twice a year, to view the state of repair.

their heirs or assigns, with or without workmen, as to them shall seem fit, twice in every year during the said term, by giving three days previous notice in writing of such his or their intention, at seasonable times in the day, to enter into and upon the said messuage or tenement and premises hereby demised, or intended so to be, to view, examine, and observe the state and condition thereof, and to make an inventory or schedule of all and every the fixtures and things to be left for the use of the said [*executors*], their executors, administrators, and assigns, and of all decays, defaults, and wants of reparations, cleansings, and amendments, then and there found, and which ought to be done by the said [*lessee*], his executors, administrators, and assigns, to give notice in writing at or upon the said messuage or tenement, to and for the said [*lessee*], his executors, administrators, and assigns, to repair, amend, and cleanse the same within six calendar months, or sooner if occasion shall require, and he the said [*lessee*], his executors, administrators, or assigns, shall and will repair, amend, and cleanse the same in all things, according to the true intent and meaning of these presents; PROVIDED ALWAYS, and it is hereby agreed, that if the rent hereby reserved, or any part thereof, shall, at any time or times during the said term, be in arrear, or remain unpaid for the space of twenty-one days next after any of the days whereon the same shall become due, according to the reservation thereof hereinbefore contained, the same being demanded on the twenty-first or any subsequent day, or any or either of the covenants or agreements hereinbefore contained on the part of the said [*lessee*], his executors, administrators, and assigns, shall not be by him or them observed and performed; *Then* and in either of such cases, it shall be lawful to and for the said [*executors*], their executors, administrators, or assigns, into and upon the said messuage or tenement and premises hereby demised, or intended so to be, or into or upon any part thereof, in the name of the whole to enter, and the same to have again, re-possess, and enjoy, as of their former estate, as if this indenture had not been made and executed, and the said [*lessee*], his executors, administrators, and assigns, and all tenants and occupiers of the same premises, thereout and from thence utterly to expel,

BY EXECUTORS.

Proviso for re-entry on non-payment of rent for twenty-one days, or on non-performance of any of the covenants.

BY EXECUTORS.

put out, and remove, any thing herein contained to the contrary notwithstanding; AND the said [*executors*] *Do* hereby for themselves, their heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*lessee*], his executors, administrators, and assigns, that he the said [*lessee*], his executors, administrators, and assigns, paying the said yearly rent hereby reserved, and observing and performing the covenants hereinbefore contained, shall and may peaceably and quietly have, hold, occupy, possess, and enjoy the said messuage or tenement and premises hereby demised, or intended so to be, with the appurtenances, during the said term, without any lawful let, suit, interruption, or disturbance whatsoever, of, from, or by the said [*executors*], their executors, administrators, or assigns, or any other person lawfully claiming or to claim by, from, or under them, or any of them, or by, from, or under their, or any of their acts, privity, consent, or procurement: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*lessee*] shall do any act whereby he shall be found bankrupt under the acts of parliament in that behalf made and provided, or shall take the benefit of any act for the relief of insolvent debtors, or shall assign or attempt to assign all his property to any person or persons for the benefit of his creditors, then and in such case, the said term of and in the said messuage or tenement and premises hereby demised, or intended so to be, shall absolutely determine, and be of no effect, any thing herein contained to the contrary thereof notwithstanding. IN WITNESS, &c.

Covenant by lessors for quiet enjoyment by lessee.

Proviso for determining the lease on the bankruptcy or insolvency of lessee.

BY OWNER OF INHERITANCE AND TRUSTEES OF A TERM.

LEASE *by the* OWNER OF THE INHERITANCE *and* TRUSTEES *of a* TERM, *reserving Rent to Trustees during the Term, and at its Expiration, to the Owner of the Inheritance:* COVENANTS *by Lessee to pay Rent and Taxes, to repair, to paint, and to insure the Premises:* POWER *to Lessors to enter and view State of Repair:* COVENANT *by Lessee not to lease Premises as a Shop, and to leave Premises in Good Repair:* CONDITION *of re-entry on Non-payment of Rent:* COVENANT *by Lessors for Quiet Enjoyment.*

THIS INDENTURE, made the day of , BETWEEN [*owner of the inheritance*] of, &c. of the first part; [*trustees*] of, &c. of the second part; and [*lessee*] of, &c. of the third part: (*recite the indenture or will creating the term and vesting the reversion in the owner of the inheritance;*) AND WHEREAS the said [*lessee*] hath contracted with the said [*owner*], for a lease of the said messuage or tenement and premises hereinafter described, and the said [*trustees*] have agreed to join therein: NOW THIS INDENTURE WITNESSETH, that in consideration of the rent hereinafter reserved, and of the covenants, conditions, and agreements, hereinafter contained on the part of the said [*lessee*], his executors, administrators, and assigns, to be observed and performed, THEY the said [*trustees*], at the request and by the direction of the said [*owner*], (testified by his being a party to and executing these presents,) and so far as they respectively can or may, but not further or otherwise, *Have* and each of them *Hath* demised and leased, and by these presents *Do*, and each of them *Doth* demise, &c. and the said [*owner*] *Hath* granted, demised, and confirmed, and by these presents *Doth* grant, demise, and confirm, unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT, &c. YIELDING AND PAYING therefore yearly and every year, during the said term hereby granted, unto

Parties.

Recitals.

Witnessing part.

Reddendum to trustees during the term,

BY OWNER OF INHERITANCE AND TRUSTEES OF A TERM.

the said [*trustees*], as trustees as aforesaid, their executors, administrators, and assigns, for so long and such period of the said term hereby granted, as the said term of years, now vested in them the said [*trustees*] as aforesaid shall subsist and continue, and from and immediately after the cesser or determination thereof, YIELDING AND PAYING unto the said [*owner*], his heirs and assigns, during the then residue of the term hereby granted, the annual sum of pounds of lawful money of Great Britain and Ireland, to be paid by four equal quarterly payments, on the day of , the day of , the day of , and the day of , without any deduction or abatement whatsoever, for or by reason of any taxes, dues, or assessments whatsoever, whether parochial or parliamentary;

and after determination of term, reddendum to owner.

Proviso for receipt of rent by owner.

PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that notwithstanding the reservations hereinbefore contained, the said rent shall henceforth be paid and payable unto the said [*owner*], his heirs or assigns, until such time as it shall be necessary for the said [*trustees*], their executors, administrators, and assigns, to have the receipt of the rents and profits of the said premises hereby demised, under or by virtue of the said term of years, until the said [*trustees*], or the survivor of them, his executors, administrators, and assigns, shall give or leave notice in writing at the said premises hereby demised, requiring the said [*lessee*], his executors, administrators, or assigns, to pay the said rent to them the said [*trustees*], their executors, administrators, or assigns, and that until such notice shall be given as aforesaid, the receipt or receipts of the said [*owner*], his heirs or assigns, shall be a good and sufficient discharge, or good and sufficient discharges for the same, to the said [*lessee*], his executors, administrators, or assigns;

Covenants by lessee

*And* the said [*lessee*] doth hereby for himself, COVENANT, promise, and agree with and to the said [*owner*], his heirs and assigns, and also with the said [*trustees*], their executors, administrators, and assigns, in manner following, (that is to say;) that he the said [*lessee*], his executors and assigns, will during the said term pay unto the said [*owner*] and [*trustees*], and their respective heirs,

to pay rent.

executors, administrators, and assigns, the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever; *And* also pay all taxes, rates, duties, and assessments whatsoever, whether parochial, parliamentary, or otherwise, now charged or hereafter to be charged upon the said premises, or upon the said [*owner*] or [*trustees*], their respective heirs, executors, administrators, or assigns, on account thereof; *And also* will during the said term well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair; together with all chimney pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where, and so often as need shall be; *And also* that he the said [*lessee*], his executors, administrators, and assigns, will in every fourth year in the said term, paint all the outside woodwork and ironwork belonging to the said premises, with two coats of proper oil colours, in a workmanlike manner; *And also* will forthwith insure the said premises hereby demised, to the full value thereof, in some respectable insurance office in London or Westminster, in the joint names of the said [*owner*] and [*trustees*], their respective heirs, executors, administrators, or assigns, and keep the same so insured during the said term; *And* will upon the request of the said [*owner*], or [*trustees*], their respective heirs, executors, administrators, and assigns, or his or their agent, shew the receipt for the last premium paid for such insurance for every current year; *And also* will, as soon as the said premises hereby demised shall be burnt down or damaged by fire, forthwith reinstate the same, under the direction of the said [*owner*] and [*trustees*], their respective heirs, executors, administrators, and assigns; AND it is hereby agreed that it shall be lawful for the said [*owner*] and [*trustees*], their respective heirs, executors, administrators, and assigns, and his, their, or any of their agents, at all seasonable times during the said term, to enter the said demised premises, to take a schedule of the

BY OWNER OF INHERITANCE AND TRUSTEES OF A TERM.

and pay taxes;

and to repair;

to paint outside;

to insure from fire in the joint names of the owner, trustees, and lessee;

and shew receipts;

to rebuild in case of fire.

Power for lessor to enter and view state of repair, and lessee to repair according to notice.

BY OWNER OF INHERITANCE AND TRUSTEES OF A TERM.

fixtures and things made and erected thereupon, and to examine the condition of the premises; *And further*, that all wants of reparation which upon such views shall be found, and for the amendment of which, notice in writing shall be left at the premises, the said [*lessee*], his executors, administrators, and assigns, will within three calendar months next after every such notice, well and sufficiently repair and make good accordingly; *And also* that he the said [*lessee*], his executors, administrators, and assigns, will not convert, use, or occupy the said premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling house, without the consent in writing of the said [*owner*] or [*trustees*], their respective heirs, executors, administrators, or assigns; *And further* will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said [*owner*] or [*trustees*], their respective heirs, executors, administrators, and assigns, the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear thereof, and damage by fire only excepted; PROVIDED ALWAYS, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, (although no formal demand shall have been made thereof,) or in case of the breach or nonperformance of any of the covenants and agreements herein contained, on the part of the said [*lessee*], his executors, administrators, or assigns, then and in either of such cases, it shall be lawful for the said [*owner*] or [*trustees*], their respective heirs, executors, administrators, or assigns, at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole to re-enter, and the same to have again, repossess, and enjoy as of their former estate, any thing hereinafter contained to the contrary notwithstanding; *And* the said [*owner*] and [*trustees*], do hereby for themselves, their

Covenant by lessee not to use premises as a shop,

and leave premises in good repair.

Proviso for re-entry on non-payment of rent or non-performance of covenants.

Covenant by lessors for quiet enjoyment of lessee.

heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*lessee*], his executors, administrators, and assigns, that he and they paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises, for the term hereby granted, without any disturbance from the [*owner*] or [*trustees*], their respective heirs, executors, administrators, or assigns, or any other person lawfully claiming by, from, or under him or them, or any of them. IN WITNESS, &c.

BY OWNER OF INHERITANCE AND TRUSTEES OF A TERM.

---

## LEASE *for a further Term of Years, subject to the same Rent and Covenants contained in the* ORIGINAL LEASE (*a*).

FOR A FURTHER TERM.

THIS INDENTURE, made, &c. BETWEEN the within named [*lessor*], of the one part, and the within named [*lessee*], of the other part; WITNESSETH, that in consideration of the rent hereby reserved, and of the covenants, conditions, and agreements respectively hereinafter con-

Parties.

Testatum.

---

(*a*) A tenant by disclaiming to hold of his landlord, forfeits his lease. Payment of rent to a stranger is not a disclaimer, so as to cause a forfeiture of the lease, *Doe* d. *Dillon* v. *Parker*, Gow. N. P. C. 180; neither does a mere refusal to pay rent to a devisee, under a contested will, accompanied with a declaration that the tenant was ready to pay to any person entitled, amount to a disclaimer, *Doe* d. *Williams* v. *Pasquali*, Peake N. P. C. 196.

What amounts to a disclaimer.

In a late case, this subject was much discussed: the circumstances were as follow: Mrs. Mary Whitall being seised in fee, devised the premises to Margaret Hodgson for life. The testatrix died in 1800, and the devisee, in 1826, having married a Mr. Smallpiece and received the rent during her life. Calvert claimed the premises as heir at law of Mary Whitall, on the decease of the tenant for life, and the following letters

FOR A FURTHER TERM.

tained on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, to be paid, done, and performed, the said [*lessor*] *Hath* demised and leased, and by these presents *Doth* demise and lease, unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT messuage or tenement, and all and singular other the premises comprised in the within written indenture, and thereby demised to the said [*lessee*], TO HAVE AND TO HOLD the said messuage or tenement, and all and singular other the premises hereby demised, or intended so to be, unto the said [*lessee*], his executors, administrators, or assigns, for and during the term of years, to be computed from the day of , which will be in the year of our Lord , from thence next ensuing, and fully to be complete and ended, at, under, and

Demise.

Parcels.

Habendum to lessor for — years, subject to the same rent and covenants as are reserved and contained in the within indenture.

---

passed between his attorney and the defendant, the tenant in possession: "Edward Frowd, Esq.—Sir, In order that you may be fully informed of the right and title of my client Mr. John Calvert to the premises in No. 14, Serle Street, in your occupation, and late the property of Mrs. M. Smallpiece, Kensington, deceased; I send you the particulars enclosed, (*which were a copy of the plaintiff's pedigree, and a statement of his claim to the premises,*) which I trust will fully satisfy you of his title, and that there will be no difficulty or objection to his receiving the rent which will be due on the 25th. inst. I shall readily give you any further information or satisfaction which you may require, if you will make an appointment to call on me for that purpose. Yours, &c. *J. Mangnall.*" To which the defendant replied, "Sir,—In answer to your letter, respecting Mr. John Calvert's claim to the house which I hold as tenant to Mr. Smallpiece, in right of his wife, I beg to inform you I have not hitherto considered Mr. J. Calvert as the landlord of the house in Serle Street; nor can I pay the rent to him without the risk of being hereafter called upon to pay it over again to the person who may fancy and perhaps prove he has a better title. I shall at all times be ready to pay the arrears to any person who shall be proved to be either heir at law, or otherwise entitled to receive it; and without wishing to dispute the connexion of blood of Mr. John Calvert to Mrs. Mary Whitall, deceased, I must decline taking upon myself to decide upon that claim, without more satisfactory proof in a legal manner. I am, &c. *Edward Frowd.*" An action of ejectment was then brought, and at the sittings of the term, *Best*, C. J. being of opinion that the defendant's letter amounted to a disclaimer, there was a verdict for the

FOR A FURTHER TERM.

subject to the like rent, payable in the like manner as in the within written indenture is mentioned in respect of the rent thereby reserved, and to the like covenants, provisions, and agreements as are therein respectively contained; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, that they, their heirs, executors, administrators, and assigns respectively shall and will, during the continuance of the additional term of years hereby granted, stand and be bound for and in respect of the said premises hereby demised, or intended so to be, with the appurtenances, in such and the like covenants, conditions, and agreements respectively, as they the said parties, and their respective heirs, executors, administrators, and assigns, do now stand bound in and by the said within written indenture, for and

Agreement that the parties will be bound in the same manner as by the original lease.

---

plaintiff. A rule *nisi* for a nonsuit was obtained on the ground that Calvert had treated defendant as his tenant, and that therefore he ought to have had notice to quit. On shewing cause it was also objected that Calvert had made no demand of possession, and defendant being in lawfully, could not be a trespasser, till Calvert had dissented to his possession. It was held, that as Mrs. Smallpiece the devisee, had only a life interest, her husband had no estate by the curtesy; the moment she was dead, therefore, Calvert might treat the defendant as a trespasser. If the defendant had ever paid rent to Calvert, a new term would have been created; but this was not the case; and when Calvert demands his rent, defendant says, "I will not pay; I am tenant to Smallpiece;" and at the trial puts Calvert to prove his title. If this be not a disclaimer, what is? The offer of Calvert was only *sub modo*, and not accepted. If defendant had held under Calvert's ancestor, the question agitated in *Doe* v. *Pasquali*, might have arisen; but all his interest expired on the death of Mrs. Smallpiece. *Doe* d. *Calvert* v. *Frowd*, 4 Bing. 557.

A tenant disclaiming his landlord's title is not entitled to a notice to quit, *Doe* d. *Jefferies* v. *Whittick*, Gow. N. P. C. 195; *Doe* d. *Calvert* v. *Frowd*, *ubi sup.*

Attornment to a third person will amount to a disclaimer of the landlord's title, and will entitle him to treat the tenant as a trespasser, and recover possession without notice to quit, *Throgmorton* v. *Whelpdale*, Bull. N. P. 96; *Hovenden* v. *Lord Annesley*, 2 Scho. and Lef. 625.

See further as to disclaimer, *ante*, Vol. IV. p. 79.

FOR A FURTHER TERM.

during the residue and remainder of the said term thereby created, it being the intent and meaning hereof, that the additional term hereby granted shall be under and subject to the like covenants, conditions, and agreements respectively therein contained, to all intents and purposes, as if every clause, matter, and thing contained in the said within written indenture were inserted and contained in these presents. IN WITNESS, &c.

---

SURRENDER.

## SURRENDER *of a* LEASE *for Years, where the Surrenderee has the Freehold; (with Variations for his having a Term).*

Parties.

THIS INDENTURE, made, &c. BETWEEN the within named [*surrenderor*], of the one part, and the within named [*surrenderee*], of the other part; WITNESSETH, that in

Testatum, whereby surrenderor

consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, by the said [*surrenderee*] to the said [*surrenderor*] paid, at or immediately before the

surrenders

sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,) HE the said [*surrenderor*] *Hath* surrendered and yielded up, and by these presents *Doth* surrender and yield up, unto the said [*surrenderee*], his

parcels,

heirs (*a*) and assigns, ALL THAT messuage or tenement described in and demised by the within written indenture, with the appurtenances, *And* all the right, title, interest, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*surrenderor*], in, to, out of, or upon the same premises, and every

to the intent that the term may be extinguished.

part and parcel thereof, with their and every of their appurtenances; *To the intent* and purpose that the same

---

TERM.

(*a*) If the surrenderee have only a term, say, "executors, administrators,"

termmay merge and be extinguished in the reversion (*b*) [freehold and inheritance] of the same messuage or tenement and premises; *And* the said [*surrenderor*] *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*surrenderee*], his (*c*) heirs and assigns, that he the said [*surrenderor*] hath not at any time heretofore made, done, omitted, committed, executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said messuage or tenement and premises hereby surrendered, or intended so to be, or any part thereof, or the said term created therein by the within written indenture as aforesaid, are, is, can, shall, or may be in anywise impeached, charged, assigned, affected, or incumbered (*d*). IN WITNESS, &c.

SURRENDER.

Covenant by surrenderor that he has not incumbered the premises.

---

(*b*) If the surrenderee have only a term in the premises, omit the words in brackets.

TERM.

(*c*) If the surrenderee has only a term, say,
"executors, administrators,"

(*d*) A Surrender (not otherwise charged or expressly exempted from all stamp duty,) of any term or terms of years, or of any freehold or uncertain interest in any lands, hereditaments, or heritable subjects, not being of copyhold or customary tenure - - - - - - - - - £ 1 15 0

And where the same, together with any schedule, receipt, or other matter put or endorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein over and above the first 1080 words, a further progressive duty of 1 5 0

Stamp.

# LETTER OF ATTORNEY.

Definition.

LETTERS OF ATTORNEY are written authorities from one person to another, to enable the latter to perform some service for the former. For some purposes the authority is expressly required to be in writing; and in all cases, it is safer that its exact terms should be thus rendered certain. Letters of attorney are therefore of very frequent occurrence in practice.

Must be by deed, when.

The authority must be by deed in some instances. Thus where the appointment is by a corporation aggregate, 9 Ed. IV. pl. 59. Bro. Ab. Corp. 24. 34. 2 Keb. 567. 604. 1 Mod. 18. 1 Roll. Abr. 514; unless the powers merely extend to ordinary and inferior purposes, as those of a common servant, Plow. 91. Vin. Ab. Corp. K., or of a bailiff to distrain. 3 Lev. 127. Salk. 91. But where the authority is for any special purpose, as to seize forfeited goods; 2 Keb. 567. 604; or to prove debts under a commission of bankruptcy, Cooke B. L. 124. the authority must be by deed under seal.

So also an agent or attorney cannot execute a deed for his principal, to bind him thereby, unless his authority is by deed. *Harrison* v. *Jackson*, 7 T. R. 209; *Elliot* v. *Davis*, 2 Bos. and Pul. 338. a verbal authority to execute the deed is not sufficient, nor it would seem, a mere written authority, there must be a deed under seal, *Horsley* v. *Bush and Tolson*, cit. 7 T. R. 209; *Williams* v. *Walesby*, 4 Esp. N. P. C. 220; *White* v. *Cayler*, 6 T. R. 176; *Berkeley* v. *Hardy*, 6 B. & C. 355. 8 Dow. and Ry. 102. S. C.; and even where the principal acknowledges that he gave the agent authority, yet the acknowledgment itself is not sufficient to prove it without the production of an authority under seal, although the presumption arising from the acknowledgment is that it was a legal authority. *Steiglitz* v. *Egginton*, 1 Holt N. P. C. 141. So also one partner cannot bind another by deed, without express authority by deed. *Harrison* v. *Jackson*, 7 T. R. 207; 4 T. R. 313.

When they must be in writing.

Other authorities, although they need not be by deed, must be in writing. Thus under the Statute of Frauds, (29 Car. II. c. 3. ss 1, 2, 3,) the authority of the agent must be in writing, in order to enable him to make or create leases, estates, or interests, of freeholds or terms for years, or any uncertain interest, other than leases under three years, in messuages, lands, or hereditaments, or for surrendering the same; but under the 4th section, the authority need not be in writing to charge executors or administrators out of their own estates, or to charge any one for the debt or default of another, or upon any agree-

ment or consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement not to be performed within a year: in all these last cases, the authority may be merely verbal. See 5 Vin. Ab. 524; 9 Ves. 250; 10 Ves. 311; *Clinan* v. *Cooke*, 1 Sch. and Lef. 22; Paley on Prin. and Agent, 136, 2nd edition. And an authority to endorse bills of exchange in another's name, may also be by parol. Per Holt, C. J. 12 Mod. 564. When by parol.

An authority of this nature, in whatever way it may be given, can only be executed by the person to whom it is given; for the confidence is personal, and cannot be assigned to another, Roll. Ab. 330; 9 Co. 77 b; *Coles* v. *Trecothick*, 9 Ves. 251, 252. 236; *Blore* v. *Sutton and others*, 3 Mer. 237. By whom a letter of attorney may be executed.

The acts done by the agent must be within the scope of his authority, or they will not bind the principal, but will be void. Salk. 96. *The Bank of Scotland* v. *Watson*, 1 Dow. 40. Thus an authority given by an executor to pay, discharge, and satisfy, all debts due from the testator, and to do all acts for the principal as executor, does not empower the agent to charge the executor by acceptances generally in his name, though for a debt due from the testator, 6 T. R. 591; *Howard* v. *Baillie*, 2 H. B. 623; but where there is a power to demand, receive, and recover a debt, the attorney may arrest the debtor. *Randall* v. *Harvey*, 2 Roll. Rep. 390. What acts attorney may do.

An act done under the power of attorney must be done in the name of the person who gives the power, and not in the attorney's name. *Combe's case*, 9 Co. 76, 77; 1 Stra. 705. And see *Paley* on Prin. and Agent, 153—155.

A power to receive money and give discharges for the same, will not authorize an attorney to indorse and negotiate bills received in payment, in the name of his principal. *Kilgour* v. *Finlayson*, 1 H. B. 155; *Murray* v. *The East India Company*, 5 B. & A. 204.

A power of attorney is in general revocable from its nature; but where it forms part of a security for money, or when it is given for a valuable consideration, it has been held to be irrevocable. *Walsh* v. *Whitcomb*, 2 Esp. N. P. C. 565; 4 Camp. 274; 2 Stark. 51; *Bromley* v. *Holland*, 7 Ves. 28. Thus where a man assigned all his effects in trust for the benefit of the trustee and his other creditors, and executed a power of attorney to the trustee to call in his debts for the purposes of the trust, it was held to be part of the security for the payment of the creditors, and therefore not revocable. *Walsh* v. *Whitcomb*, *ubi supra*. So also a direction to an agent to enter upon premises in mortgage, and sell the stock, &c. which was declared to be for the benefit of the plaintiff, and amounting to an authority to pay over the amount to him being in consideration of his postponing the sale of the estate, was held to be an As to revoking power.

irrevocable authority, and that the plaintiff might sue the agent for money had and received. *Metcalf* v. *Clough*, 2 Man. and Ry. 178.

Death of principal.

The authority conferred by a letter of attorney, must be executed during the life of the principal; for it will be revoked by his death. Bac. Ab. tit. Authority E; Sty. 424; Co. Litt. 52 b. but this rule does not apply to authorities given by a corporation aggregate. Co. Litt. 52 b.

A power of attorney given to a creditor, authorizing him to receive a debt, unaccompanied by any assignment of it, and not forming part of any security given, is not an appropriation of the debt, and is determined by the death of the debtor, although the latter declared at the time that it was given with a view to enable the creditor to apply the money received towards the liquidation of his debt. *Lepard* v. *Vernon*, 2 Ves. and Bea. 51. But where a bankrupt, before his bankruptcy, executed a bill of sale of a ship while she was at sea, and gave a power of attorney to execute the endorsement of sale upon the register of the ship when she returned home, the power was not revoked by the bankruptcy of the party giving the power, because by the bill of sale, the interest in the ship was vested in the vendee. *Dixon* v. *Ewart*, 1 Buck's. B. C. 94; 3 Mer. 322. S. C; Paley, Prin. and A., 157.

It seems, that where acts are done by the attorney before he knows of the revocation of his warrant by the principal, if done *bona fide*, cannot be avoided by his principal, if they were to his disadvantage, though he might consent to avoid such as were for his benefit. Per Buller, J., in *Salt* v. *Field*, 5 T. R. 215.

However, in the case of *Watson* v. *King*, 4 Camp. 272, S. C. 1 Stark. 121. it was decided, that a power of attorney, though coupled with an interest, was instantly revoked by the death of the grantor, and that an act done under it by the attorney, though *bona fide*, and before notice of the death of the grantor, was a nullity.

Practical directions.

A power of attorney intended as a security for money, should always be accompanied by an assignment of the sum.

In framing letters of attorney, all the necessary powers should be given expressly and separately; nothing should be left to the effect of general words, as they will not enlarge the particular powers before given: Thus where attornies were authorized to receive all sums of money due to principal on any account whatsoever, and to use means for the recovery thereof, "and to transact all business," and the attornies indorsed a bill drawn in favour of their principal, as executor, it was held that they had exceeded their authority, and that the words "all business" merely related to receiving the sums of money. *Hay* v. *Goldsmid*, 2 Smith, 79. So where an attorney was authorized to do particular specified acts affecting the principal's property, "and generally to do, negotiate, and transact his

business, as fully and effectually as if he were present and acting therein;" it was determined, that general words had no effect to enlarge the particular powers given in the authority. *Attwood* v. *Mannings*, 7 B. and C. 278. 1 Man. and Ry. 66.

Who may appoint attornies, and be appointed attornies.

All persons capable of doing the act to be delegated to another, may appoint an attorney; and persons who from labouring under disabilities, are incapable of making attornies, may themselves be appointed attornies. Thus, though an infant or feme covert cannot make an attorney, yet they may be appointed attornies to others. Co. Litt. 52 a. 112 a. Perk. s. 148. 187. 199.

It is not necessary that the agent should have his authority at the time of his entering into the contract for his principal: where the latter therefore subsequently ratified a purchase made by an agent without authority, it was held that the former was an agent within the statute of frauds. *Maclean* v. *Dunn*, 4 Bing. 722.

Stamp.

The stamps imposed on letters of attorney by the 55 Geo. III, c. 184, are as follows:

| | £ | s. | d. |
|---|---|---|---|
| Letter or power of attorney, made by any petty officer, seaman, marine, or soldier serving as a marine, or by the executors or administrators of any such person, for receiving prize money - - - - - - - | 0 | 1 | 0 |
| ——— and for receiving wages - - - - | 1 | 0 | 0 |
| Letter of attorney for the sale, transfer, acceptance, or receipt of dividends, of any of the government or parliamentary stocks or funds - - - - - - | 1 | 0 | 0 |
| Letter or power of attorney of any other kind, or commission or factor in the nature thereof - - - - | 1 | 10 | 0 |
| And where the same, together with any schedule, or other matter put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of - - | 1 | 0 | 0 |

*Exemptions from the preceding and all other stamp duties.*

Letters of attorney for the receipt of dividends of any definite and certain share of the government or parliamentary stocks or funds, producing a yearly dividend of less than three pounds.

See further, 3 Stewart's Practice of Conveyancing, p. 213—217.

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

LETTER OF ATTORNEY, *on a* PERSON *possessed of Real and Personal Property* GOING ABROAD; *with* POWERS *to the Attornies to take Possession of Real Property, to Demise the same, and to seal and deliver Deeds, &c. for demising the Premises, and carrying Contracts into Execution; to sue for Rents, &c. and to enter upon Forfeitures and bring Ejectments; to Distrain; to fell Timber; to Repair and Rebuild; to raise Trees; to lay up Stone, &c. for another House; to pay Minister a Salary; to appoint Gamekeepers; to dispose of the Personalty; to pay Rents, &c.; to purchase Lands; to enter into Contracts for that Purpose; to commence and prosecute Actions; to appear to Actions against Principal; to replevy Goods; to cause Appearance to be made in a particular Action; to exhibit Bill in Equity for a particular Purpose; to recover Debts; to settle Accounts; to pay Debts; to pay Sums for Childrens' Maintenance; to place out Money at Interest; and to perform all other necessary Acts:* POWER *to the Attornies to examine each other's Accounts; (with* VARIATIONS *giving other and different Powers and Authorities).*

That principal is entitled to real estate; to leaseholds and personalty;

WHEREAS I, [J. B.] of, &c. esq. am seised of or well entitled unto the manor of [T.], in the county of , and divers messuages, tenements, lands, tithes, and hereditaments, situate, lying and being, arising, renewing, and increasing in [T.] aforesaid, and in [L. M. P.], and elsewhere in the said county; *And* am also possessed of and entitled to divers household and other goods, furniture, cattle, chattels, and personal estate, within the said county; *And* several persons are and stand justly indebted to me

and that per-

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

in several sums of money, upon specialties and simple contract; *And* I am and stand indebted unto some persons upon bonds and otherwise, and I have many other affairs, interests, and concerns to be transacted, managed, settled, and taken care of in my absence; AND WHEREAS I do intend shortly to go to the East Indies, and continue for some time in parts beyonds the seas: NOW KNOW ALL MEN BY THESE PRESENTS, that I the said [J. B.] have made, ordained, constituted, and appointed, and in my place and stead put, and by these presents, *Do* make, &c. [*attornies*] of, &c. jointly and severally my true and lawful attorney and attornies, for me and on my behalf, and for my use, from time to time and at any time hereafter, to enter into and upon and take possession of my manor, messuages, tenements, lands, tithes, and hereditaments, or any of them, or any part or parts of them or any of them, and to demise or let the same or any of them to any person or persons, for any term or number of years, under such yearly reserved rent and restrictions, and upon such terms and conditions, as my said attornies or either of them shall think fit; and for the purposes aforesaid, for me, and in my name, and as my act and deed, to seal and deliver any such indenture or indentures, deed or deeds, lease or leases, articles, contracts, and agreements, of or concerning my said manors, messuages or tenements, lands, hereditaments, and premises, or any of them, or any part or parts of them, or of any of them, as my said attornies or either of them shall think fit; *And also* for carrying into execution any agreements or contracts already made or entered into between me and any of my tenants, touching their holding, enjoying, and farming any part or parts of my real estate; *And also* for me, and in my name, and for my use, to demand, take, seize, sue for, recover, and receive all rents and arrears of rent, waifs, estrays, escheats, fines, forfeitures, amerciaments, and other perquisites and profits, received, issuing, forfeited, escheated, or otherwise due or payable, or to become forfeited to me, out of, or for or in respect of my said manors, &c. or any of them, or any part or parts of them, or of any of them, or otherwise howsoever; *And* to enter into or upon the same, or any part or parts thereof, upon any forfeiture, or upon any

sons are indebted to principal; and that he is indebted to others, &c.; that he is going abroad.

Appointment of attornies to enter into and take possession of his freehold property,

and to demise the same at their discretion;

and to seal and deliver deeds, &c. for demising the premises,

and for carrying any agreement as to the real estate into execution;

to sue for rents and other perquisites of manor;

and to enter upon forfeiture, and bring ejectment,

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

condition or covenant, or upon any other occasion, and an ejectment bring for the recovery of the possession thereof, and to distrain for rent and for arrears of rent, and to sell or dispose of such distress or distresses, or cause the same to be done; *And* also to fell and cut down any timber trees, or other trees, or underwood, now standing or growing, or being in or upon my said manors, lands, and premises, or any part thereof, and the same to use in and about the repairing and rebuilding of my said messuages and outhouses, tenement, and premises, or to sell and dispose thereof, or of any part thereof, for my use, as they or either of them shall think fit; *And also* to repair, pull down, and rebuild, any house, walls, or buildings, in or upon my said manors, tenements, and lands, and premises, when and as often as they or either of them shall think fit; *And* to raise, grow, and purchase any trees, fruit trees, plants, or shrubs, and plant the same in such part of my said lands as they, or either of them, shall think fit; *And* put and keep, or cause to be put and kept, such parts of my real estates as shall not be let to farm, but remain in my own possession, and the park, rails, fences, and walks in and about the same, in good repair, order, and condition, and from time to time to stock the same or any part thereof, with sheep or cattle, and sell or dispose of the same for my use; *And* to make, buy, and lay up stone, wood, glass, lead, and other materials, in order to erect a new capital messuage and other buildings which I intend to build at aforesaid, or cause or procure the same to be done, when and as my attornies or either of them shall think fit; *And* to pay and allow to the present minister and curate of aforesaid, such yearly salary, tithes, taxes, and perquisites, as they or either of them shall think fit to pay and allow unto him, yearly and every year, so long as he shall continue to officiate and do his duty as minister or curate of the said church; *And also* from time to time to nominate, constitute, and appoint and depute any person or persons to be gamekeeper or gamekeepers for my said manor of [T.], and for that purpose, for me and in my name to sign and seal, and as my act and deed to deliver any such deputation or deputations, appointment or appointments, and to determine,

and to distrain; to fell timber, and to repair the buildings with it;

to repair and rebuild,

and to raise trees;

and keep premises in repair;

to lay up stone, &c. to build another house;

and pay the minister his salary,

and appoint gamekeepers,

make void, and revoke the same or any of them, at the will and pleasure of my said attornies or either of them; *And also* to sell and dispose of so much and such part of my household and other goods and furniture, goods, chattels, and personal estate, in or about aforesaid, as they or either of them shall think fit; *And* to pay and allow all fee farm rents, quit rents, or other rents, parliamentary and other taxes, rates, or assessments, outgoings, sum and sums of money, which I am or shall be subject or liable to pay, discharge, and allow, for or in respect of my real and personal estate, or any part or parts of them, or either of them, or in anywise relating thereto (*a*); *And also* to purchase any manors, messuages,

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

and to dispose of the personalty,

to pay rents and taxes;

to purchase manors, &c.

---

(*a*) The following additional powers may be inserted, according to the circumstances. The form it will be observed, runs in the third person.

"*And also* to ask, demand, and receive, of and from all and every the person or persons to whom it doth, shall, or may belong to pay the same, all and every the legacies, gifts, and bequests, which may at any time hereafter, during the absence of the said [*principal*], be given, bequeathed, or left to him the said [*principal*], by any person or persons whomsoever, or otherwise become due or payable to him the said [*principal*], and to make, sign, execute, and deliver, such receipts, releases, and other discharges, acquittances, or acknowledgments for the same respectively, as they the said attornies shall think fit and be advised; *And also* for him the said [*principal*], and in his name, or otherwise, to receive all and every sum and sums of money whatsoever, which now is or are due, arising, or belonging to the [*principal*], upon or by virtue of any mortgage or mortgages, or other security or securities whatsoever, and on receipt thereof, for and in the name of the said [*principal*], to make, sign, and give, good and sufficient receipts, releases, acquittances, or other discharges for the same; *And also* to sign, seal, and execute, make, or deliver, all proper and sufficient reconveyances, releases, and other assurances of the lands, tenements, hereditaments, and property which shall have been mortgaged for payment thereof; *And also* for the said [*prin-*

To receive legacies;

to receive money due on mortgage and other securities,

and to execute reconveyances;

to compound debts;

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

tenements, tithes, lands, and hereditaments, for me and in my name, or in trust for me and my heirs, and for me and in my name, to enter into such contracts and agreements, contract or agreement, for such purchases or purchase, and for payment of the consideration money thereof, and to pay the same, and take or cause to be taken, such methods for carrying the same into execution, and completing such purchase or purchases, as my said attornies or either of them shall think fit; *And also* for me, and in my name, or in the names of any of my agents, tenants, or servants, by his or their consent, but at my proper costs and charges, to commence and prosecute any action or actions, suit or suits, prosecution or prosecutions, in-

and enter into contracts for that purpose;

to commence or prosecute actions;

---

*cipal*], and in his name, or otherwise, to sign the certificate or certificates of any bankrupt or bankrupts, and compound with any person or persons for or in respect of the aforesaid debts, or of any sums of money, or any other debt, debts, or demands whatsoever, which now is or are, or shall or may at any time or times hereafter, become due or payable to him the said [*principal*], and take or receive any composition or dividend thereof or thereupon, and give receipts, releases, and other discharges for the whole of the said debts, sums, or demands, or to submit to arbitration all and every or any such debts or demands, and all and every other claims, rights, matters, and things, due to, and concerning him the said [*principal*], as the said attornies shall think most advisable for the benefit and advantage of the said [*principal*], and for that purpose, and in his name, to enter into, make, sign, execute, and deliver, such bonds of submission to arbitration, or other deeds or instruments, as are usual in like cases; *And also* in the name, and for and on the behalf of the said [*principal*], to present a fit person or persons to any church or churches, or ecclesiastical benefice or benefices, to the advowson or right of presentation whereof the said [*principal*] is or may be entitled; *And also* to surrender and be admitted to any customary or copyhold messuages, lands, and hereditaments, now belonging, or which shall at any time hereafter descend, come, or belong to him the

to submit claims to arbitration;

to present to livings;

to surrender and be admitted to copyholds;

formation or complaint, either at law or in equity, or in any ecclesiastical court, or before any justice or justices of the peace, or any other competent judge or judicature, against any person or persons, for or concerning any trespass, injury, or damage, done or committed within or upon any of my manors, &c. or for or concerning any of my great or small tithes, oblations, obventions, mortuaries, or other ecclesiastical dues, or for or concerning any loss or damage of or to my personal estate, or any part thereof, or for breach or non-performance of any covenant, condition, or agreement contained in any deed or deeds, lease or leases, articles, contracts, or agreements, already or hereafter to be made, executed, entered into, by, for, or on behalf of any of the lessees, tenants, or farmers of any of my manors, lands, and premises, of, for, or concerning the ascertaining, maintaining, or supporting any estate, right, title, interest, or property, in, to, or out of the same, or any part or parts thereof, or otherwise relating thereto, or to cause the same to be commenced and prosecuted, in such manner, and so far as my said attornies, or either of them, shall be advised or think fit; *And* to appear for me, my tenants, agents, and servants, to any action or suit, information, or indictment, or other prosecution, which may be brought or proved against me, them,

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

to appear to actions against principal or his tenants;

---

said [*principal*] in any manner howsoever, and to pay any fines, and do and perform any service or services which shall be due, and to be done and performed by him the said [*principal*], for, upon, or in respect of the same; *And* for the better doing, performing, and executing all or any of the matters and things aforesaid, he the said [*principal*] doth hereby give and grant unto the said [*attornies*], full power and authority to substitute and appoint, and in his place or stead put one or more attorney or attornies for him the said [*principal*], and as his attorney or attornies, and any such appointment or appointments, attorney or attornies, from time to time to revoke or displace, and any other or others in his or their place or places to substitute or appoint, as they the said [*attornies*] shall from time to time think fit;"

to substitute other attornies;

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

or any of them, for or by reason or on account of any act, matter, or thing which they or any of them shall do, or cause to be done, by the orders or directions of me, or either of my said attornies, in order to the ascertaining, maintaining, and supporting such my right, title, estate, interest, and property, and to defend the same at my costs, charges, and expenses, and indemnify such my tenants, agents, and servants, and every of them, from and against all such costs, charges, and expenses, as they or either or any of them shall or may bear, sustain, and be put unto, for or by reason of any suit, action, or prosecution as aforesaid being brought in any of their names, or against them or any of them, or in consequence thereof, or in anywise relating thereto; *And also* particularly to replevy, or cause to be replevied, any goods, cattle, or chattels, which shall or may be distrained upon or from my real estates or any of them, by or on behalf of Mr. [H.] of, &c. or his assignees or assignee, and to cause an appearance or appearances to be entered to any ejectment or ejectments, action or actions, suit or suits, either at law or in equity, which [A. B.] and [C. D.], or either of them, shall or may bring or institute, or cause to be made or instituted, against me, or any of my tenants, for or by reason of the non-payment of an annuity or yearly sum of pounds, or other sum, or any arrears thereof claimed to be owing to him, or issuing out of my real estate or some part thereof; *And* to prosecute or cause to be prosecuted such replevin or replevins, and defend such ejectment and ejectments, and other action or actions, suit or suits, at my costs and charges; *And also* for me and in my name, to exhibit a bill or bills in equity against [W. W.] of, &c. and [T. B.] of, &c. the surviving trustees and executors of the last will and testament of my late father deceased, and such other person or persons as should be made parties thereto, and proceed thereupon, in order to obtain an injunction to stop any proceedings at law, and to have such annuity or rent-charge, or any arrears thereof, if justly due, paid and satisfied out of the residue of my said late father's personal estate, in the hands or possession of the said [W. W.] and [T. B.], or one of them, such residue being as I am advised and apprehend, subject and liable thereto, in

and to replevy goods, &c.

to cause appearance to be made to any actions of ejectment;

to prosecute such replevies, and defend ejectments;

to exhibit bills in equity,

ease and exoneration of my real estate, if any such annuity or yearly rent-charge is issuing out of my real estate, or any part thereof, and for such other purposes as counsel shall advise or think proper; *And also* (*b*) to demand, sue for, recover, and receive, all such sum or sums of money, as is or are or shall become due or owing to me from any person or persons whomsoever, or to agree or compound for the same, and upon receipt thereof, or

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

and to recover debts;

---

(*b*) The following additional clauses may be inserted;

"*And also* for me, in my name, and on my behalf, to enter into any arrangements with any person or persons to whom I am or shall or may be indebted, touching or concerning the payment or liquidation of his, her, or their debt or respective debts, or any part thereof respectively; *And* to execute and give to any such person or persons, any security or securities, real or personal, on any part of my estate or effects, for the payment of his, her, or their debt or respective debts, or any part or parts thereof respectively, either with or without interest, by instalments or otherwise, at such time or respective times, and under and subject to such terms, conditions, stipulations, and agreements, of any nature soever, as my said attornies shall think reasonable and proper; *And also* for me and on my behalf, to borrow and take up at interest on any security, real or personal, any sum or sums of money my said attornies shall think proper; *And* for the purpose of securing any debt or debts, or sum or sums of money now due or owing, or hereafter to become due or owing from me, to any person or persons, either with or without interest for the same as aforesaid, or any such sum or sums of money, so to be borrowed or taken up at interest as aforesaid, or for any other purpose which my said attornies shall think expedient or proper, for me and in my name to sign, make, indorse, or accept any promissory note or notes, bill or bills of exchange, and enter into, sign, seal, and execute, any covenant or covenants, agreement or agreements, bond or bonds, or warrant of attorney or warrants of attorney for confessing judgment against me in any court or courts of Great Britain."

To make arrangements with creditors,

and give security for debts;

to borrow monies;

to give bills, bonds, and warrants of attorney.

GENERAL POWERS TO MANAGE REAL AND PERSONAL PROPERTY.

of a composition or compositions for the same, receipts, acquittances, and sufficient discharges to sign and give for me, and in my name; *And* all accounts to adjust and settle between me and any person or persons with whom I have, or shall have, any accounts or reckonings depending or unsettled; *And also* to pay and discharge all principal monies due and owing from me upon mortgage or bond, and interest due for the same, and all other debts and sums of money owing, or which shall be owing by me, or which I am or shall be engaged or liable to pay or satisfy; *And also* to pay all and every such sum or sums of money as my said attornies shall think necessary or proper, for the maintenance, support, or education of my child or children already born or which shall be hereafter born; *And also* to place out at interest, any part of my money which shall be received by or come to the hands of my said attornies, or either of them, if they or either of them shall think it prudent; and generally to do and perform all other acts and things which shall be fitting, reasonable, or necessary to be done, performed, or executed, in and about the said premises, in the managing or ordering of my real or personal estates, receipts, interests, and concerns, as fully and effectually to all intents and purposes whatsoever, as I the said [J. B.] might or could do, if I were personally present; I hereby ratifying and confirming whatsoever my said attornies, or either of them, shall do or cause to be done, in and about the premises, by virtue of these presents: And I do hereby authorize and empower any one of my said attornies, from time to time, and so often as he shall think fit, to examine the accounts of the receipts and disbursements and charges of the other of them, touching and concerning my real and personal estate, and the care and management thereof, and his acting by virtue of and under the powers, authority, and directions hereby given or vested in them or either of them, and in consequence thereof, or in anywise relating thereto, and to allow and settle the same, if upon any such inspection or examination, any of my said attornies shall approve thereof, or think the same fair and just. In witness, &c.

to settle accounts;

to pay debts;

to pay sums for childrens' maintenance;

to place out money at interest,

and to perform all necessary acts.

Power to attornies to inspect each others' accounts.

## LETTER OF ATTORNEY *to collect and receive* DEBTS *in Scotland, with full* POWERS *for that Purpose.*

TO RECEIVE DEBTS IN SCOTLAND.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*principal*] of, &c. send greeting: WHEREAS various persons resident in the city of Glasgow, and in its neighbourhood, are indebted to me in divers sums of money, which said debts and monies, and the persons from whom they are due, and the securities for the same, are particularly mentioned and specified in the schedule or inventory thereof hereunder written or hereunto annexed: NOW KNOW YE, that I the said [*principal*] have made, nominated, and appointed, and by these presents do make, nominate, and appoint [*attorney*] of, &c. my true and lawful attorney, for me, and in my name, and for my own use and benefit, to ask, demand, sue for, recover, and receive of and from all and every the person or persons so indebted as aforesaid, all and every the book and other debts, sum and sums of money, now due and owing unto me from all and every or any of the said person or persons, set opposite to their respective names, in the said schedule hereunder written or hereunto annexed, and also all such other sums of money as I the said [*principal*] shall at any time hereafter in writing under my hand express to be due to me from them, or any or either of them, and upon receipt thereof, from time to time to make and give receipts, releases, and other proper and sufficient discharges and acquittances for the same, or any part thereof respectively; *And* upon nonpayment of the said debts and monies, or any part thereof, to commence, exercise, and prosecute for me, and in my name, and on my behalf, all necessary, lawful, and other powers, remedies, actions, and suits, for the recovery, receiving, obtaining, and getting in the same, with full power to compromise or compound for any debt or debts, and accept a part for and in lieu of the whole there-

Recital that persons are indebted to principal.

Appointment of attorney,

to sue for and receive the debts;

and on nonpayment thereof, to commence actions, &c., with power to compound, and submit to arbitration.

TO RECEIVE DEBTS IN SCOTLAND.

of, and to give time and indulgence for payment of any of the said debt or debts, and in the mean time accept such security for payment thereof as he shall think proper; *And* also with full power to submit any debt or debts, or doubt or dispute in relation to any debt or debts, to arbitration, and sign and execute for me and in my name any deed or writing for the purpose of giving effect to such submission, as fully and effectually to all intents and purposes whatsoever, as I myself might or could have done, taken, commenced, exercised, or prosecuted, or assented to if personally present, and these presents had not been made; *And* also from time to time to substitute, nominate, and appoint one or more attorney or attornies under him the said [*attorney*], for all or any of the purposes aforesaid, and again at his pleasure to displace and remove such substituted attorney or attornies, as he shall see occasion or think fit; I the said [*principal*] hereby ratifying and allowing, and promising and agreeing from time to time and at all times hereafter to ratify, allow, confirm, and give effect unto all and whatsoever he the said [*attorney*], or his lawful attornies to be by him from time to time nominated and appointed in pursuance of the power hereinbefore given him for that purpose, shall lawfully do or cause to be done in or concerning the premises by virtue of these presents. IN WITNESS, &c.

Power to substitute other attornies.

THE SCHEDULE, &c.

LETTER OF ATTORNEY *to receive* DEBT *from a Debtor resident in the* WEST INDIES, *with the Proper Forms under the* 5 *Geo. II. c.* 7(*a*). TO RECEIVE A DEBT.

KNOW ALL MEN BY THESE PRESENTS, that I [*principal*] of, &c. *Have* made, constituted, and appointed, and by these presents *Do* make, constitute, and appoint [*attor-* Letter of attorney.

---

(*a*) The act for the more easy recovery of debts in the colonies, is stated in 2 Byth. 245, Stewart's edition. The certificate of the mayor or magistrate may be as follows:

"TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*mayor*] of, &c. in pursuance of an act of parliament made and passed in the fifth year of the reign of our late sovereign lord King George the Second, intituled, "An Act for the more easy recovery of debts in his Majesty's plantations and colonies in America," do hereby certify that A. B. of, &c. being a person well known and worthy of good credit, did, by solemn oath, which he took upon the holy evangelists, solemnly declare, testify, and depose to be true, the several matters and things contained in the affidavit hereunto annexed. Certificate of mayor.

In faith and testimony whereof, I the said [*mayor*] have caused the seal of the office of mayoralty of the said city of to be hereunto put and affixed, and the bill or account and deed poll or letter of attorney mentioned in the said affidavit to be also hereunto annexed. Dated, &c."

The affidavit may be as follows; but must, of course, be varied according to the circumstances: Affidavit of debt.

"A. B. of, &c. maketh oath, that the several goods and articles mentioned in the bill or account hereunto annexed, signed by the said [A. B.], were, to the knowledge of this deponent, supplied and furnished by the said [A. B.] to

TO RECEIVE A DEBT.

*ney*] of, &c. my true and lawful attorney, for me and in my name, or otherwise, and for my use to ask, demand, and receive, sue for, and recover, all and every sum and sums of money whatsoever that is or are now due and owing to me of and from [*debtor*] of, &c. and on receipt or payment thereof, or of any part thereof, for me and in my name, proper receipts and discharges for the same to sign and deliver, and to do all other lawful acts and things in and about the premises, as effectually as I could do the same if I were personally present; *And* all and whatsoever the said [*attorney*] shall lawfully do in the premises, I the above named [*principal*] do hereby agree to ratify and confirm. IN WITNESS, &c.

---

[*debtor*], of , in the island of , by the order and at the request of the said [*debtor*]: *And* this deponent further saith, that the sum of pounds, the amount of the said bill or account, is now justly due and owing from the said [*debtor*] to him the said [A. B.]."

The affidavit of the letter of attorney may be as follows:

"*And* this deponent further saith, that on the day of , he this deponent, and [*the other attesting witness*] of, &c. were present, and did see the said [A. B.] duly sign, seal, and as his act and deed deliver the letter of attorney bearing date the day of , hereunto also annexed, and that the name [A. B.] appearing thereunto subscribed, is of the proper handwriting of the said [A. B.]; and that the names and , thereunto also subscribed as witnesses attesting the execution thereof, are of the respective proper handwriting of this deponent and the said . Sworn, &c."

It is clear, that under the statute, the creditor may himself swear to his own debt; although in Barbadoes, it seems, a different construction has obtained. See 1 Howard's Col. Introd. If a third party make the affidavit, no difficulty will be found in making the proper alterations. For the mode of recovering debts in the East Indies, together with the proper forms, see 4 Chit. Com. Law, 30 *et seq.*

LETTER OF ATTORNEY *to receive a* LEGACY (*a*), *with Powers to receive a* SMALLER SUM, *to give a* BOND *to refund a Part of the Legacy, and to submit the Matter to Arbitration.*

TO RECEIVE A LEGACY.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*principal*] of, &c. send greeting: WHEREAS [*testator*], late of, &c. deceased, in and by his last will and testament in writing, bearing date the day of , gave and bequeathed to me the sum of pounds, to be paid within the space of months after his decease, and appointed [*executors*] of, &c. executors of his said will: NOW KNOW YE, that I the said [*principal*] do make, ordain, constitute, and appoint, [*attorney*] of, &c. my true and lawful attorney and agent, for me and in my name to ask, demand, sue for, recover, and receive, of and from the said [*executors*], or either of them, or other the person or persons to whom it shall or may belong to pay the same, the said legacy or sum of pounds, so given and bequeathed to me by the said last will of the said [*testator*] deceased, as aforesaid, together with any interest which may be due for the same; *And* upon payment of the same legacy and interest, to give an effectual receipt and discharge for the same; *And* in case it shall be proved to the satisfaction of the said [*attorney*], that the estate of the said [*testator*] deceased, is inadequate to the payment in full of the said legacy, in a due course of administration thereof, then to accept such sum or sums of money in satisfaction and discharge of the said legacy, as the said [*attorney*] shall be of opinion ought to be paid thereon;

That testator bequeathed legacy to principal.

Appointment of attorney;

and to give receipt for the same;

with power to accept a smaller sum;

---

(*a*) It is generally the more prudent plan, where the principal is abroad, to assign a legacy to the attorney, in order to provide against the death of the principal, before the execution of the power. For a form of an assignment of a legacy, see *post*, title PURCHASE DEEDS.

Assignment.

TO RECEIVE A LEGACY.

*And also* for me and in my name, and as my act and deed, to sign, seal, deliver, and execute, (if the said [*attorney*] shall think proper, and he shall be required so to do,) any bond or obligation or covenant for the re-payment or re-funding of the said legacy, or of a due proportion thereof, in case the said estate and effects of the said [*testator*], shall subsequently to the payment thereof prove insufficient to discharge the debts of the said [*testator*], and also the legacies bequeathed by his said will, in the same rate and proportion as the said legacy so bequeathed to me as aforesaid, shall have been paid; *And also* to submit any matter or matters connected with the claim of the said legacy, or the administration of the estate of the said [*testator*] to arbitration, and in my name to execute and enter into any bond or bonds, covenant or covenants, to abide by, and perform the award, and generally to do, perform, and execute all matters and things in and about the premises, as fully and effectually to all intents and purposes whatsoever, as I might or could have done if personally present; *And also* to substitute and appoint any person or persons to act under or in the place of the said [*attorney*], in all or any of the matters aforesaid, and every such substitution at pleasure to revoke; the said [*principal*] hereby agreeing to ratify and confirm whatsoever the said [*attorney*], or his substitute or substitutes, shall lawfully do or cause to be done in or about the premises, by virtue of these presents. IN WITNESS, &c.

and to give a bond to refund a part of the legacy, if necessary;

and to submit the matter to arbitration;

and to appoint other attornies.

## LETTER OF ATTORNEY *by* EXECUTORS, *to receive* STOCK *in the* AMERICAN FUNDS *belonging to the Testator.*

TO RECEIVE AMERICAN STOCK.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, [*principals*] of, &c. SEND GREETING; WHEREAS [*testator*], late of, &c. being possessed of the sum of pounds capital stock, standing in his name in the books of the governor and company of the bank of Philadelphia, in North America, by his last will and testament in writing, bearing date the day of , bequeathed the same stock upon the trusts therein mentioned, and appointed the said [*principals*] executors of his said will; NOW KNOW YE, that we the said [*principals*] have made constituted, and appointed, and by these presents do make, constitute, and appoint [*attorney*], of Philadelphia aforesaid, gentleman, our true and lawful attorney and agent, for us, and in our names, to demand, receive, and recover of and from the said governor and company of the bank of Philadelphia aforesaid, or other person or persons whom it may concern to pay or transfer the same, the said sum of pounds capital stock, now standing in the said books of the governor and company of the bank of Philadelphia, together with all interest or dividends which may be due for the same; *And* upon the non-payment or transfer of the said sum of pounds capital stock, or of any part thereof, or of any interest or dividends due for or in respect thereof, for and in the names of the said [*principals*], to commence, file, and prosecute such actions and suits, or other proceedings, in any court of law or equity whatsoever, for the recovering, enforcing, and obtaining payment and transfer of the same sum of pounds capital stock, or any part thereof, or of any interest or dividends due for or in respect thereof, as the said [*attorney*] shall think proper; *And* generally to do, perform, and execute all other matters and things in and about the premises, as fully and

That testator died possessed of American stock.

Appointment of attorney to receive stock,

and on nonpayment thereof to commence actions;

and to do all other necessary acts;

TO RECEIVE AMERICAN STOCK.

effectually, to all intents and purposes whatsoever, as the said [*principals*] might or could have done if personally present; *And also* to substitute and appoint any person or persons to act under or in the place of the said [*attorney*] in all or any of the matters aforesaid, and every such substitution at pleasure to revoke, the said [*principals*] hereby agreeing to ratify and confirm whatsoever the said [*attorney*], or his substitute or substitutes, shall lawfully do, or cause to be done in or about the premises by virtue of these presents. IN WITNESS, &c.

principals agreeing to ratify the same.

---

TO EXECUTE CONVEYANCE.

## LETTER OF ATTORNEY *to receive* PURCHASE MONEY, *to give a* RECEIPT *for the same, and to* EXECUTE CONVEYANCE *of Premises to Purchaser.*

Recital of principal having contracted for sale of premises,

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [*principal*] of, &c. SEND GREETING; WHEREAS I have contracted with [*purchaser*] of, &c. for the sale to him of a certain messuage or tenement and premises, situate at, &c.

and is about to leave the kingdom.

for the sum of pounds; AND WHEREAS I am about to leave the kingdom, and am desirous of authorizing [*attorney*] of, &c. to complete the said contract on my part, and to execute the proper conveyances and assurances thereof; NOW KNOW YE, that I the said [*principal*], have made, constituted, and appointed, and by these presents *Do* make, constitute, and appoint the said [*attorney*], my lawful attorney, for me and in my name, place, and stead, and for my use, to ask, demand, and receive of and from the said [*purchaser*], his executors, administrators, or assigns, the said purchase money or sum of pounds, and to give the said [*purchaser*], his executors, administrators, and assigns, a valid and complete receipt and discharge for the same, upon the receipt thereof, for me and in my name, and as my act and deed,

Appointment of attorney to receive purchase-money,

and give receipt for the same,

to seal, deliver, and execute, to and to the use of the said [*purchaser*], his heirs and assigns, or otherwise, as he or they shall direct, all and every necessary and proper conveyances and assurances of the said messuage or tenement, lands and hereditaments; *And further*, for me and in my name, and as my act and deed, to do and perfect all and every other act, matter, and thing whatsoever, which shall or may be deemed necessary, proper, or expedient for the fully, absolutely, and effectually vesting, conveying, and transferring the said hereditaments and premises, and all my right, estate, and title therein or thereto, in and to the said [*purchaser*], his heirs and assigns, as fully, amply, and beneficially, to all intents, constructions, and purposes whatsoever, as I myself might or could do if personally present, and so and in such manner as that there may be made a good and perfect title to the same hereditaments and premises, I, the said [*vendor*], hereby ratifying and confirming, and promising and agreeing, from time to time and at all times, to ratify and confirm, and hold for good, firm, valid, and effectual, all and whatsoever my said attorney shall lawfully do, or cause to be done, in or concerning the premises by virtue of these presents. IN WITNESS, &c.

TO EXECUTE CONVEYANCE.

and execute conveyance,

and do all other necessary acts.

principal confirming all acts of his attorney.

FROM ONE PARTNER TO ANOTHER.

## Letter of Attorney *from* Partner at Home *to his* Partner Abroad, *giving full Powers for carrying on the* Partnership Business.

That principal carries on partnership.

To all persons to whom these presents shall come, I, [*principal*] of, &c. send greeting; Whereas I the said [*principal*], together with [*attorney*], residing in , now carrying on the business of West India merchants, in partnership, and I am desirous of authorizing the said [*attorney*] to act for me in all matters relating to the said partnership in aforesaid: Now

Appointment of attorney to carry on business;

therefore know ye, that I, the said [*principal*], do hereby nominate, constitute, and appoint, the said [*attorney*] to be my attorney and agent in the West Indies aforesaid, and in my name, and as my act, as such partner as aforesaid, to carry on and conduct the said business, according to the usual and regular course thereof, and to employ agents and servants to cultivate, manage, and improve, all such plantations as may be in my possession, or under my management in respect of the said partnership business, and for that purpose to purchase slaves (*a*), cattle, plantation implements and utensils, and other live and dead stock; *And also* to make any consignments or dispositions of the produce of such plantations or estates, the produce whereof shall be at the disposal of the said partnership, and to transact all other affairs and business relating to any plantations or estates in the said island in which we the said [*partners*] shall be interested, either as owner or owners, mortgagee or mortgagees, or otherwise; *And*

to employ agents,

and purchase slaves, &c.

and to make consignments of produce;

and to take possession of all partnership estates;

---

Registry of slaves.

(*a*) A letter of attorney does not seem to come within the provisions of the 5 Geo. IV. c. 113, s. 37, which requires the registered names of slaves to be *set forth* in any conveyance affecting them. See 2 Byth. by Stewart, 248, 249.

FROM ONE PARTNER TO ANOTHER.

*also* to use and pursue all such ways and means as may be necessary or proper for obtaining possession of any plantations or estates, or of the produce of any plantations or estates, to the possession whereof I the said [*principal*], or the said [*attorney*], or either of us, is entitled in respect of the said partnership business, either as absolute owners, or by virtue of any mortgage, lien, or other security, or otherwise; *And also* to make any sales, mortgages, leases, or other dispositions that shall or may be necessary or proper, of any plantations or estates, slaves, cattle, stock, crops, produce, or other property, to or in which the said partnership shall be entitled or interested; *And* for that purpose to sign, seal, execute, and deliver, any contracts and agreements, conveyances, and assurances, and other deeds and instruments, according to the laws and customs of the said island of ; *And also* to examine, adjust, and settle, all accounts and reckonings which shall be subsisting unsettled between the said partnership and any other person or persons whomsoever, and to pay or receive (as the case may be) the balances (if any) which shall appear to be due on the settlement of such accounts and reckonings; *And also* to compound for any debt or debts due or owing by or from the said partnership; *And also* to commence and prosecute any actions, suits, or other proceedings at law or in equity, against any person or persons, in respect of any of the matters or things aforesaid, or any other matter or thing relating to the concerns of the said partnership business; *And* to appear to and defend any actions, suits, or other proceedings commenced, or to be commenced, against the said partnership by reason thereof, and either to proceed to judgment and execution, or to become nonsuit, or to suffer judgment to go by default in any such actions, suits, or other proceedings as aforesaid, or to compromise the same, as shall seem most expedient; *And also* to submit any disputes or questions which which may arise respecting any of the dealings or transactions of the said partnership business, to arbitration; and generally, to act in the entire management and conduct of all the affairs and concerns of every kind and description, in any manner relating to or connected with the business of the said partnership, and to use and pursue all

and to sell, mortgage, &c.

and for these purposes to make all necessary deeds,

and to settle accounts;

and to pay or receive proper balances,

and compound debts,
and commence actions,

and appear to the same,
and deal with the same;

and submit disputes to arbitration;

and to do all other necessary acts.

FROM ONE PARTNER TO ANOTHER.

such ways and means, and make, do, and execute all such acts, matters, and things, as may be requisite or expedient for that purpose, as fully and effectually, to all intents and purposes, as I the said [*principal*] could or might do if personally present; *And also* to substitute and appoint any person or persons to act under or in the place of the said [*attorney*], in all or any of the matters aforesaid, and every such substitution at pleasure to revoke; I the said [*principal*] hereby agreeing to ratify and confirm whatsoever the said [*attorney*], or his substitute or substitutes, shall lawfully do or cause to be done in or about the premises by virtue of these presents. IN WITNESS, &c.

and to appoint other attornies.

---

TO RECEIVE ANNUITY.

## LETTER OF ATTORNEY *to receive* ANNUITY, *with Power to* DISTRAIN *upon the Lands on which it is charged.*

Recital of grant of annuity for life of grantor.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*principal*] of, &c. SEND GREETING; WHEREAS by an indenture bearing date on or about the day of , and made between [*grantor of annuity*] of, &c. of the first part; me the said [*principal*] of, &c. of the second part; and [*trustee*] of, &c. of the third part; the said [*grantor*], in consideration of the sum of pounds, (paid as therein is mentioned,) granted an annuity or yearly rent or sum of pounds unto me, my executors, administrators, and assigns, for the term of his natural life, payable quarterly on the day of , the day of , the day of , and the day of , in every year, and charged the same upon certain lands, tenements, and hereditaments, situate in the county of , in the said indenture particularly described, in the manner therein mentioned, with powers of distress and entry upon, and perception of the rents and profits of the same he-

reditaments and premises, for better securing the payment of the said annuity, at the times and in the manner therein mentioned; *And* by the said indenture the same hereditaments and premises were demised by the said [*grantor*], unto the said [*trustee*], his executors, administrators, and assigns, for the term of ninety-nine years, if the said [*grantor*] should so long live, upon certain trusts therein expressed, for securing the said annuity or yearly rent or sum of pounds; AND WHEREAS the payment of the said annuity or rent of pounds, is further secured by the bond or obligation in writing of the said [*grantor*], in the principal sum of pounds, and also by a warrant of attorney to confess judgment thereupon; AND WHEREAS it is inconvenient for me personally to receive the said annuity so granted to me as hereinbefore is mentioned; NOW THEREFORE KNOW YE, that I the said [*principal*] have made, constituted, and appointed, and by these presents, *Do* make, constitute, and appoint, [*attorney*] of, &c. my true and lawful attorney, for me, and in my name, to ask, demand, sue for, recover, and receive, of and from the said [*grantor*], his heirs, executors, and administrators, and all and every other the person or persons to whom it doth, may, or shall belong to pay the same, the said annuity or yearly rent or sum of pounds, together with all and every such sum and sums of money, as shall or may at any time, and from time to time, become due and payable upon or by virtue of the said hereinbefore recited indenture, or of the said bond, warrant of attorney, or judgment, or otherwise howsoever; *And* upon payment of the said annuity, or rent or sum of pounds, or of any part thereof, to make and sign good and sufficient receipts and discharges for the same; *And* upon nonpayment of the same, or any part thereof, when due and in arrear, for me, and in my name, or otherwise, to enter into and upon the said hereditaments and premises so charged therewith, as hereinbefore is mentioned, and every or any part thereof, and distrain, or receive and take the rents, issues, and profits of the said hereditaments and premises for the same, or sue or issue out execution on the said judgment, or use, take, commence, and prosecute, all and every or any such powers, remedies, actions, suits,

TO RECEIVE ANNUITY.

Further securities.

Appointment of attorney,

to receive annuity;

to give receipts;

and upon nonpayment, to enter, &c. upon the premises,

or enter execution on judgment,

with all other powers;

TO RECEIVE ANNUITY.

expedients, ways, and means, for the recovering, obtaining, and procuring payment of the same annuity or yearly rent or sum of pounds, and all arrears thereof, and such other sum and sums of money as aforesaid, as fully and effectually to all intents and purposes, as I myself could or might have used, taken, commenced, or prosecuted, if personally present, and these presents had not been made; *And also* from time to time to substitute and appoint one or more attorney or attornies under him the said [*attorney*], for all or any of the purposes aforesaid, as he shall see occasion or think fit; I the said [*principal*] hereby ratifying, promising, and agreeing to ratify and confirm, all and whatsoever the said [*attorney*], or his attorney or attornies, shall lawfully do or cause to be done in and concerning the premises, by virtue of these presents. IN WITNESS, &c.

to substitute other attornies;

principal confirming all proper acts.

---

TO RECEIVE MONEY DUE ON BOND.

### LETTER OF ATTORNEY *to receive Money due on a* BOND, *and the Interest thereof.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*principal*] of, &c. SEND GREETING: WHEREAS [*obligor*] of, &c. by a bond or obligation in writing under his hand and seal, bearing date the day of , became bound in the penal sum of pounds, for the punctual payment to me, my executors, administrators, and assigns, of the sum of pounds, on the day of , with interest for the same after the rate of pounds for one hundred pounds by the year, by equal half yearly payments on the day of and the day of : NOW KNOW YE, that I the said [*principal*] *Have* made, constituted, and appointed, *And* by these presents *Do* make, constitute, and appoint [*attorney*] of, &c. my true and lawful attorney, for me and in my name to ask, demand, sue for, recover, and receive of and from the said [*obligor*], his heirs, executors, and

Recital of bond.

Appointment of attorney,

to receive sum and interest;

administrators, the said sum of pounds, together with the interest thereof, and all and every such sum and sums of money as shall from time to time become due and payable for and in respect of the same; *And* upon payment thereof, or of any part thereof, to give and sign good and effectual receipts and discharges; *And* upon nonpayment thereof, or of any part thereof, to take, commence, institute, and prosecute, for me and in my name, all such powers, remedies, actions, suits, expedients, ways, and means, for the recovering, receiving, obtaining, and getting in the said principal sum of pounds, and the interest thereof, and all other sums of money which shall or may be then due to me upon or by virtue of the said bond, as fully and effectually to all intents and purposes whatsoever as I myself could or might have taken, commenced, executed, and prosecuted, if personally present; *And* also from time to time to substitute and appoint one or more attorney or attorneys under him the said [*attorney*] for all or any of the purposes aforesaid, as he or they shall see occasion or think fit; I the said [*principal*] hereby ratifying, and promising and agreeing from time to time and at all times hereafter to ratify and confirm, all and whatsoever the said [*attorney*], or his attorney or attorneys, shall lawfully do, or cause to be done, in and concerning the premises by virtue of these presents. IN WITNESS, &c.

TO RECEIVE MONEY DUE ON BOND.

to receive and give good discharges;

on nonpayment to bring actions, &c.

Power to substitute other attornies,

principal confirming all acts of attorney.

TO RECEIVE DISTRIBUTIVE SHARE OF INTESTATE'S EFFECTS.

## LETTER OF ATTORNEY *to receive* DISTRIBUTIVE SHARE *of an Intestate's* PERSONAL ESTATE; *with all necessary* POWERS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*principal*] of, &c. SEND GREETING; WHEREAS [*intestate*] late of, &c. deceased, departed this life on or about the day of , intestate; AND WHEREAS letters of administration of the estate and effects of the said [*intestate*], were granted unto [*administrators*] of, &c. on or about the day of , by the court of ; AND WHEREAS I am the brother and one of the next of kin of the said [*intestate*], and am as such entitled to a distributive share or proportion of his estate and effects; NOW KNOW YE, that I the said [*principal*] *Have* made, deputed, constituted, and appointed, and by these presents *Do* make, depute, constitute, and appoint, [*attorney*] of, &c. my true and lawful attorney and agent, for me and in my name to ask, demand, sue for, recover, and receive, of and from the said [*administrators*], or other the persons or person to whom it shall or may belong to pay the same, all such distributive share or proportion of the personal estate and effects of the said [*intestate*] deceased, as I am, or shall or may be entitled to, under or by virtue of the statute made for the distribution of the estates of persons dying intestate, or otherwise howsoever, as the brother of the said [*intestate*], and also all other sum or sums of money, goods, chattels, and personal estate whatsoever, which on the decease of the said [*intestate*], came or belonged, or of right ought to have come or belonged, to me; *And* upon payment of such distributive share or proportion, to give an effectual receipt and discharge for the same; *And also* for me and in my name, and as my act and deed, to sign, seal, deliver, and

Death of intestate, and that letters of administration have been granted to administrators;

that principal is the brother and one of the next of kin of intestate.

Appointment of attorney to receive distributive share,

and to give a receipt for the same;

and give a bond to refund, in

TO RECEIVE DISTRIBUTIVE SHARE OF INTESTATE'S EFFECTS.

execute, if thereunto required, a bond or obligation or other security for the repayment of the said distributive share or proportion, or of a due proportion thereof, in case the estate and effects of the said [*intestate*] shall prove insufficient to discharge the debts and other lawful and fair demands, which may be thereafter made thereon; *And* also to submit any matter or matters connected with my claim of the share or proportion of the estate and effects of the said [*intestate*] to arbitration, and in my name to execute and enter into any bond or bonds, covenant or covenants, to abide by and perform the award, *And generally* to do, perform, and execute all matters and things in and about the premises, as fully and effectually, to all intents and purposes whatsoever, as I myself might or could do if personally present; *And* also to substitute and appoint any person or persons to act under or in the place of the said [*attorney*], in all or any of the matters aforesaid, and every such substitution at pleasure to revoke, I hereby agreeing to ratify and confirm whatsoever the said [*attorney*], or his substitute or substitutes, shall lawfully do or cause to be done in and about the premises, by virtue of these presents. In witness, &c.

case of need,

and to submit the matter to arbitration;

and to do all other necessary acts;

and to appoint other attornies,

principal agreeing to ratify all acts.

TO TAKE POSSESSION OF REAL AND PERSONAL ESTATE.

LETTER OF ATTORNEY *from* DEVISEES AND EXECUTORS, *named in a Will, to Attornies, to take Possession and recover the* REAL AND PERSONAL ESTATE *of the* TESTATOR *in a Foreign Settlement or Colony.*

Recitals.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, [*principals*] of, &c. SEND GREETING, (*Recite will, appointing principals, executors, and trustees, and death of testator seised of considerable real estate in the island of* ). NOW KNOW YE, *That* we [*principals*], as such devisees and executors named in the last will and testament of [*testator*] of, &c. deceased, *Have,* and each of us *Hath* nominated, constituted, and appointed, and by these presents *Do,* and each of us *Doth* nominate, &c. [*attornies*] of, &c. and each of them, jointly and severally, their, and each of their true and lawful attornies and attorney, for us and each of us, and in our and each of our names and name, as such devisees and executors as aforesaid, or in the names or name of the said [*attornies*], or either of them, or otherwise, as the case shall require, to demand, take, and receive full possession and seisin of all and every the plantations, lands, hereditaments, and real and personal estate whatsoever, in the said island of , now vested in or belonging to us the said [*principals*] as such devisees and executors as aforesaid, or otherwise howsoever; *And also* of all slaves, cattle, live and dead stock, utensils, and implements to the said plantations, lands, and hereditaments, or any of them, belonging or appertaining, and to take upon themselves and himself the whole management and direction thereof; *And* to receive and take the rents, issues, and profits thereof, and of every part thereof, and to pay and defray all necessary charges and expenses in and about the said plantations, lands, and premises, and to supply and keep up the stock

Appointment of attornies, jointly and severally,

to take possession of testator's real and personal estate in the island of ;

and to receive rents and defray all expenses,

thereon respectively, and to remit and assign to us the said [*principals*] the produce and profits thereof, or otherwise to dispose thereof in such manner as they shall from time to time direct; *And* also for us the said [*principals*], as such devisees and executors as aforesaid, or otherwise, to ask, demand, sue for, receive, and recover of and from all and every person and persons in or belonging to the said island of , whom it doth, or shall, or may concern, all arrears of rent and sums of money, debts, sums, and effects whatsoever, now due, owing, and payable, or belonging, or which shall or may at any time or times hereafter become due, owing, payable, or belonging, to us the said [*principals*], or either of us, as such devisees and executors as aforesaid, or otherwise howsoever; *And* upon receipt thereof, or of any part thereof, in such manner as the case shall require, to sign, seal, execute, deliver, and give all and every such releases, acquittances, or other good and sufficient discharges, as shall be thought requisite in that behalf; *And* also to examine, settle, and adjust all accounts which now are, or which shall or may at any time hereafter, be open or depending between us the said [*principals*], as such devisees and executors as aforesaid, or either of us, and any other person or persons in or belonging to the said island of , and to receive or pay (as the case may require) the balances thereupon found due; *And also* to compromise or refer to arbitration, or otherwise compound, all or any matters of difference between the said [*principals*], as devisees and executors as aforesaid, and all and every other person and persons whomsoever in or belonging to the said island, and to perform, and fulfil, and abide by, such award or awards as shall be thereupon made; *And* generally to do, perform, and execute all and every such further and other acts, deeds, matters and things whatsoever, as shall be requisite and necessary, in, about, or concerning the premises, or any part thereof, in as full, ample, and beneficial a manner, to all intents and purposes whatsoever, as we the said [*principals*], or either of us, might or could do in their or his own proper person or persons; (*Agreement to ratify all acts of attorney, as ante, p.* 160). IN WITNESS, &c.

TO TAKE POSSESSION OF REAL AND PERSONAL ESTATE.

to receive debts owing to the testator;

to give discharges;

to adjust accounts;

to compromise, or refer to arbitration;

and generally to do all other necessary acts.

TO RECEIVE RENT.

## LETTER OF ATTORNEY *to receive* RENT, *and if necessary to* DISTRAIN *for the same.*

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*principal*] of, &c. SEND GREETING: WHEREAS by an indenture of demise, bearing date the day of , and made, or expressed to be made, between the said [*principal*], of the one part, and [*lessee*] of, &c. of the other part; I the said [*principal*] demised and leased unto the said [*lessee*], his executors, administrators, and assigns, a messuage or tenement, piece or parcel of land and premises, situate at, &c. TO HOLD the same unto the said [*lessee*], his executors, administrators, and assigns, from the day of last past, for the term of years, at the yearly rent of pounds, payable quarterly on the day of , the day of , the day of , and the day of in every year: NOW KNOW YE, that I the said [*principal*] *Have* made, deputed, constituted, and appointed, and by these presents *Do* make, depute, constitute, and appoint [*attorney*] of, &c. my true and lawful attorney, for me and in my name, and for my own use and benefit, to ask, demand, sue for, recover, and receive of and from the said [*lessee*], his executors, administrators, and assigns, or other the tenant or occupier, tenants or occupiers, for the time being, of the said messuage or tenement and premises, or any part thereof, and of and from all other persons whomsoever, the said yearly rent or sum of pounds, and also all such sum and sums of money as now are, or hereafter shall or may at any time or times during the subsistence of these presents, grow or become due or payable from and out of or in respect of the said messuage or tenement; *And* from time to time upon receipt thereof, or of any part thereof, for me and in my name to give and sign good and sufficient receipts and discharges for the same; *And* also to pay, set-

Recital of a lease for years.

Appointment of attorney, to demand rent, and give receipts for the same;

to allow just claims;

tle, and adjust, deduct, and allow, all accounts, claims, and demands for ground rent, land tax, and repairs of the same, and other lawful deductions; *And* upon nonpayment of the said yearly rent of pounds, or any part thereof, for me and in my name, into and upon the said premises, or any part thereof, to enter, and to seize and distrain all or any goods, chattels, or effects which shall then and there be found, or which shall have been thence unlawfully removed, and every or any such distress or distresses, to take, carry away, and keep, until the said rent of pounds, and all arrears thereof, and all costs and charges attendant upon such distress, shall be fully paid and satisfied; *And* in default or nonpayment thereof for days next after such distress shall be made, to sell and dispose, or otherwise deal with the same according to law; *Or* at the discretion of the said [*attorney*], to commence or prosecute any actions or suits, and to take or employ all such other lawful powers, remedies, expedients, ways, and means, for the recovering and obtaining payment of the same, as fully and effectually to all intents and purposes whatsoever, as I myself might or could have commenced, prosecuted, taken, and employed, if personally present; *And* also from time to time to substitute and appoint one or more attorney or attornies under him the said [*attorney*] for all or any of the purposes aforesaid, and again at his pleasure to displace and remove, as he shall see occasion or think fit; I the said [*principal*] hereby giving and granting unto the said [*attorney*] full and sufficient power and authority in or concerning the premises, for all and every or any of the purposes aforesaid, and promising and agreeing to ratify, allow, and confirm all and whatsoever the said [*attorney*], or his attorney or attornies, shall lawfully do, or cause to be done, in and concerning the premises, by virtue of these presents. IN WITNESS, &c.

TO RECEIVE RENT.

on non payment of rent, to enter and distrain for the same;

to bring actions, &c. and do all other necessary acts,

Power to substitute other attornies,

principal agreeing to confirm all acts.

TO RECEIVE FREIGHT.

## LETTER OF ATTORNEY *to receive the* FREIGHT *of a* SHIP.

That principal is master of a vessel.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [A. B.], of, &c. SEND GREETING: WHEREAS I am master of the ship or vessel called the , of the burthen of tons, or thereabouts, and now lying in the dock: NOW KNOW YE, that I do hereby constitute and appoint [*attorney*] of, &c. to be my true and lawful attorney, for me and in my name and for my use, and the use of the rest of the part owners of the said ship or vessel, to demand and receive, sue for and recover, by all lawful ways and means, of and from [*debtors*], of, &c. merchants, and any or either of them, and all other persons whom it shall or may concern to pay the same, all and every sums and sum of money which now are or is due, owing, and payable, by and from them, or either of them, as freight or otherwise, for or in respect of any goods and merchandizes brought or imported in the said ship, in her late voyage from to London, by virtue of a charterparty, dated the day of last, or otherwise howsoever; *And* upon receipt of all or any such sums or sum of money, to give sufficient receipts and discharges for the same; I hereby confirming, and agreeing to confirm, whatsoever my said attorney shall lawfully do in and about the premises. IN WITNESS, &c.

LETTER OF ATTORNEY, *whereby Attorney, by virtue of a Power contained in his original Appointment, delegates his* POWER *to* ANOTHER ATTORNEY.

WHEREBY ATTORNEY APPOINTS ANOTHER ATTORNEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*principal*] SENDS GREETING: WHEREAS, by a deed-poll, bearing date the day of , [A. B.], of, &c. duly made, constituted, and appointed the said [*principal*] his true and lawful attorney, for him and in his name to &c. (*Recite former letter of attorney fully, with the authority to appoint a substitute*): NOW KNOW YE, that the said [*principal*], by virtue and in exercise and execution of the power or authority in that behalf contained in the said recited deed-poll, and of all powers and authorities him enabling thereunto, *Hath* made, constituted, and appointed, and by these presents *Doth* make, constitute, and appoint, [*attorney*], of, &c. to be the true and lawful attorney of the said [A. B.], for him and in his name, place, and stead, or in the name, place, and stead of the said [*principal*], to execute and perform all and every the powers and authorities, matters and things, mentioned and contained in the said recited deed-poll, in such and the same manner, and as fully and effectually, to all intents and purposes, as he the said [A. B.] or the said [*principal*] might or could have done, if personally present, and as he the said [*attorney*] might or could have done if he had been named the attorney of the said [A. B.] in and by the said recited deed-poll, in the stead of the said [*principal*]; the [*principal*] hereby confirming, and agreeing to confirm, whatsoever the said [*attorney*] shall lawfully do or cause to be done in and about the premises. IN WITNESS, &c.

Recital of former letter of attorney.

Appointment of attorney.

REVOCATION.

## REVOCATION *of a* LETTER *of* ATTORNEY.

Revocation of letter of attorney.

KNOW ALL MEN, BY THESE PRESENTS, That I [A. B.], of, &c. do by these presents absolutely recall, annul, revoke, and make void, to all intents, effects, constructions, and purposes whatsoever, a certain deed-poll, or instrument in writing under my hand and seal, and bearing date the day of , being a power of attorney from me to [C. D.], of, &c. and an appointment to him to be, &c. (*State the nature of the power, according to the circumstances*), and all powers and authorities whatsoever, and every matter, cause, and thing therein contained.

Witness my hand and seal, this day of } [A. B.]

# LETTER OF CREDIT.



LETTER OF CREDIT, *whereby one Person agrees to* GUARANTEE *the Repayment of such Sums as shall be advanced to Another.*

Gentlemen,

IN consideration of your having agreed to advance such sum of money to [C. D.] as he shall have occasion for at , I, the undersigned [E. F.], do hereby undertake to guarantee to you the due payment of all such sums as you may from time to time advance or pay to him or his order; but so as my liability shall not at any time, or in any event, exceed the sum of pounds: and I further agree, that this guarantee or engagement shall not be withdrawn, but shall continue in full force until the expiration of one calendar month after notice to you by writing under my hand, of my intention to discontinue or determine the same. Dated this day of

I am your obedient servant,

E. F.

To Mr. A. B.

# LETTERS OF ADMINISTRATION.

LIMITED LETTERS OF ADMINISTRATION.

## Letters of Administration *limited to an* Outstanding Term (*a*).

Recital of indenture of assignment to deceased trustee.

JOHN, by Divine permission, bishop of , to [*administrator*], of, &c. Greeting: Whereas by an indenture of assignment, bearing date the day of , in the year of our Lord , and made, or expressed to be made, Between [A. B.], of, &c. of the first part; [C. D.] of, &c. of the second part; [Y. Y.], of the third part; and [*deceased trustee*] of, &c. a trustee named and appointed by and on behalf of the said [Y. Y.], for the purposes thereinafter mentioned, of the fourth part; the said [C. D.] assigned and transferred All &c. (*parcels*); To hold the same unto the said [*deceased*

---

Limited letters of administration.

(*a*) Limited letters of administration will always be granted at the instance of the owner of the inheritance, where the termor is dead, intestate, and there has been no letters of administration granted of his effects, or the person to whom such administration has been granted is dead, or the executor of the termor is dead, intestate, or without having proved the will. See 1 Byth. by Stewart, 400. Particular care must be had to take out the letters from the proper ecclesiastical court.

The jurisdiction of proving wills and granting letters of administration regularly belongs to the bishop of the diocese, or the metropolitan of the province in which the parties resided at the time of their death. But if the intestate die within some peculiar jurisdiction, the owner has the power of granting the letters of administration. This privilege is founded on the notion of an original composition between such owner and the ordinary of the diocese for that purpose. Toll. Ex. 49. There are also other jurisdictions by prescription. 3 Bac. Ab. 39. Cowp. 286. 6 Mod. 242.

If the intestate's property be all comprised within the diocese in which

LIMITED LETTERS OF ADMINISTRATION.

*trustee*], his executors, administrators, and assigns, from thenceforth, for and during all the residue and remainder of a certain term of years, created by an indenture bearing date the day of , in the year of our lord , then to come and unexpired, *In trust* nevertheless for the said [Y. Y.], his heirs and assigns and to be assigned and disposed of from time to time as he or they shall direct or appoint, and in the mean time to attend the reversion and inheritance of the lands, tenements, and premises therein comprised, in order to protect the same from all subsequent and intermediate incumbrances; AND WHEREAS by divers mesne conveyances, devises, and other good and sufficient assurances in the law, and particularly by indentures of lease and release, bearing date, &c. and made, &c. [*owner of inheritance*] is now become entitled to the freehold and inheritance of the several messuages, tenements, and premises so assigned to the said [*deceased trustee*] for the

Indentures, whereby reversion is vested in owner of inheritance.

---

he dies, the jurisdiction is with the diocesan. But if there be *bona notabilia* in two distinct dioceses, or in several peculiars within the same province, and even within the same diocese, (but see *Rex* v. *Yonge*, 5 M. & S. 119.) or if the testator die (not *in itinere*) in one diocese, although he have no goods there, having *bona notabilia* in another, in all these cases the jurisdiction shall belong to the archbishop of the province. Toll. Ex. 50. 2 Rob. on Wills, 54. If there be *bona notabilia* in one diocese of each province, the bishops of each diocese will grant probates; but if in several dioceses in each province the archbishop of each province shall grant probate; and so if there be *bona notabilia* in different dioceses of the province, and in one diocese only of the other, in respect of the former the archbishop shall have the probate, in respect of the other the particular bishop. Off. Ex. 48. And see *Stokes* v. *Bate*, 5 B. & C. 491.

If there be goods in England and Ireland, several probates shall be granted by the archbishop or bishop in England, and the archbishop or bishop in Ireland, as the case may require. 3 Bac. Abr. 36. The probate of a bishop's will belongs to his metropolitan. *Ib.* 37.

If there be goods in the diocese of a province, and in a peculiar of the same province, there must be several probates, and not a prerogative probate; 4 Burn. Ecc. L. 191. And where an archdeacon had jurisdiction over all the wills of all persons dying within his archdea-

LIMITED LETTERS OF ADMINISTRATION.

residue of the aforesaid term of five hundred years, in and by the hereinbefore recited indenture of assignment of the day of ; AND WHEREAS he hath also the sole equitable right, title, and interest, in and to the residue of the said term; AND WHEREAS it hath been alleged on the part of the said [*owner*], that the said [*deceased trustee*] departed this life intestate, and without having made any assignment of the said premises, or the then residue of the said term of years, and that no letters of administration of the goods, chattels, and effects of the said [*deceased trustee*] deceased, have been granted, and therefore the said owner is unable to make a complete legal title to the said premises, for want of a personal representative of the said [*deceased trustee*] deceased; AND WHEREAS the said [*owner*] is desirous that letters of administration of the goods, chattels, and credits of the said [*deceased trustee*], deceased, may be committed and granted to the said [*intended administrator*], limited only for

Death of trustee intestate,

and that no letters of administration of his effects have been granted;

of owner's desire that limited administration may be granted.

---

conry, a probate by the archdeacon of the will of a person who died there, having a term of years in another archdeaconry, within the same diocese, was held good; *Rex* v. *Yonge*, 5 M. & S. 119. If the testator die beyond sea, although the goods be in one diocese only, the jurisdiction belongs to the archbishop; 3 Bac. Abr. 37. *Sed vide Griffith* v. *Griffith*, Say. R. 83. *Bona notabilia* are goods to the amount of 5*l.* And if there be effects in one diocese, other than that in which the testator died, to the amount of 5*l.*, they constitute *bona notabilia*; 3 Bac. Abr. 37. If the goods in two dioceses amount together to 5*l.*, they shall constitute *bona notabilia*, and consequently be subject to the archbishop's jurisdiction; 4 Burn's Eccl. L. 189. But goods to the amount of 10*l.* or more, in the diocese in which the testator dies, will not constitute *bona notabilia*, unless there be goods in another diocese to the amount of 5*l.*; 3 Bac. Abr. 37. A lease or term for years, if of the value of 5*l.*, is *bona notabilia* where the lands lie; 3 Bac. Ab. 37. So are debts due to that amount, however desperate; *Ib.* 47. But if there be a bond in the penalty of 5*l.* for the payment of a less sum, it will not be *bona notabilia*, though forfeited; Off. Ex. 46. Lands devised to executors for payment of debts and legacies, though they become assets, are not considered as *bona notabilia*; Off. Ex. 46; 3 Bac. Ab. 37; 11 Vin. Abr. 80. Debts by specialty are *bona notabilia*, wherever at the death the securities are; 3 Bac. Abr. 37.

LIMITED LETTERS OF ADMINISTRATION.

the purpose of assigning the residue and remainder of the said term of years, so as aforesaid vested in the said [*deceased trustee*] deceased, to some person or persons, in trust to attend upon the reversion and inheritance of the said premises, for the purpose of protecting the same against mesne incumbrances: WE, therefore, the bishop aforesaid, do, by these presents, grant free power to you the said [*intended administrator*], a person named by and on behalf of the said [*owner*], and in whose fidelity we greatly confide, to administer and faithfully dispose of the goods, chattels, and credits of the said [*deceased trustee*] intestate deceased, limited so far as concerns all the right, title, and interest of him the said [*deceased trustee*], deceased, in and to all those messuages or tenements and premises hereinbefore, and in the said in part recited indenture of assignment of the day of , more particularly described, and the residue and remainder of the said term of years therein

Grant of administration, limited to the outstanding term.

---

Thus a judgment, the record of which was at Westminster, is *bona notabilia* there, though the action was laid in Dorsetshire; but a bill of exchange follows the person of the debtor; 3 Salk. 164; Ld. Raym. 354; 11 Vin. Ab. 77—80. An annuity out of a parsonage and lease for years, shall be reputed as property, where the parsonage or land lies; Com. Dig. Admon. 134. Money in the hands of the accountant-general requires a prerogative probate; 7 Ves. 409; 12 Ves. 417. The salary or wages of persons employed in the dock yards, are not *bona notabilia* to found a prerogative administration upon; 4 & 5 Ann. c. 16. s. 26. The goods which a man has with him on a journey do not constitute *bona notabilia* in the place where they happen to be; Off. Ex. 45. If a man has two houses in different dioceses, and resides chiefly at one, but sometimes goes to the other, and being there for a day or two, dies, leaving no *bona notabilia* in the first mentioned house, probate shall be granted by the bishop of the diocese in which the testator died, for he was a commorant there, and not there as a traveller; 1 Bl. Com. 380; Cro. Eliz. 719. And so if a debtor has two houses in several dioceses, and at the time of the death of the debtee, and commission of administration, is inhabitant and resident at one of the houses, that will exclude the jurisdiction of the ordinary of the diocese in which the other house stood; Ld. Ray. 562. If administration be granted by a wrong jurisdiction, it is void in the case of a bishop or

LIMITED LETTERS OF ADMINISTRATION.

now to come and unexpired; and all the benefit and advantage to be had, received, and taken therefrom, but no further or otherwise, or in any other manner whatsoever, you being first sworn on the Holy Evangelists well and faithfully to administer the same, and to make a true and perfect inventory of the goods, chattels, and credits of the said [*deceased trustee*] deceased, limited as aforesaid, and to exhibit the same into the registry of our Episcopal Court of , together with a true and just account of and concerning your administration therein when you shall be thereunto lawfully required; *And* we do by these presents ordain, depute, and constitute you the said [*intended administrator*] the administrator of the goods, chattels, and credits of the said [*deceased trustee*] deceased, limited so far as concerns all the right, title, and interest of him the said [*deceased trustee*] deceased, in and to all and singular the said messuages or tenements and premises, with the appurtenances, hereinbefore particularly mentioned and described, and the residue and remainder of the said term of years therein, granted as aforesaid, and now to come and unexpired, and all benefit and advantage to be had, received, and taken therefrom, but no further or otherwise, or in any other manner whatsoever. GIVEN under the seal of our vicar general and official principal, which we use in this behalf, the day of , in the year of our Lord , and in the year of our translation .

---

inferior judge, but voidable only in the case of an archbishop; and in the latter case will be of force till reversed by sentence; 4 Burn Eccl. L. 193. But see *Stokes* v. *Bate*, 5 B. & C. 491; 3 Stew. Prac. Convey. p. 360 *et seq.*

Canal shares being by a private act personal estate, are *bona notabilia* where the company's office is situate, although the canal pass through another province; *Smith* v. *Stafford*, 2 Wils. C C. 166.

Administration of the effects of a deceased partner will be granted to the surviving partner, if he cite the next of kin, and they decline administration, the partnership accounts being unsettled; *Cawthorn* v. *Chalie*, 2 Sim. & Stu. 127.

# LETTER OF LICENSE.

## Letter of License *from* Creditors *to* Debtor.



TO ALL TO WHOM THESE PRESENTS SHALL COME, we, whose names and seals are hereunder subscribed and set, creditors of [*debtor*] of, &c. send greeting; WHEREAS the said [*debtor*] is justly indebted to us his creditors in the several sums of money mentioned in the schedule hereunto annexed, and set opposite to our names respectively; AND WHEREAS he is at present unable to pay and satisfy the same, and he hath requested us to grant him our license for years, to proceed in the management and carrying on of his said trade or business, and to collect and get in his debts, goods, and effects, in order that he may discharge our said debts: NOW KNOW YE, that we, the said creditors of the said [*debtor*], for the purposes aforesaid, severally and respectively, for our several and respective heirs, executors, and administrators, but not for each other, or the heirs, executors, or administrators of each other, *Have* given and granted, and by these presents do give and grant unto the said [*debtor*], full and free license and liberty to come, go, abide, remain, pass, and repass, from or in any place or places within the United Kingdom of Great Britain and Ireland, from the day of the date of these presents, for the space of years, for the transacting and carrying on his said trade or business, and for the getting, recovering, and receiving, his debts, goods, and effects, adjusting and settling his accounts, for the satisfying our said respective debts, without any suit, molestation, or interruption of or by us his said creditors, our heirs, executors, administrators, partners, or assigns respectively; *And* we, for ourselves and our respective heirs, executors, and administrators, but not for each other, or for the heirs, executors, or administrators of each other, do hereby severally covenant and agree with the said [*debtor*], that neither we, nor any of us, nor the heirs,

Recital of debtor being indebted to creditors, and his inability to pay,

and agreement to grant license.

Grant of license for years.

Agreement not to sue debtor for the debts.

LETTER OF LICENSE.

executors, or administrators of us or any of us, will at any time hereafter during the said space of years, sue, prosecute, arrest, attach, seize, sequester, or extend the said [*debtor*], or his lands, goods, chattels, estates, or effects, for or concerning the debts now severally and respectively due to us from him, and whether or not included and named in the said schedule hereunto annexed, or for any other matter, cause, or thing whatsoever; *And* that these presents shall or may be pleaded and allowed, and produced in evidence in any court or courts in bar or discharge of all or any actions, suits, judgments, or executions which shall or may be brought, commenced, prosecuted, awarded, or recovered against the said [*debtor*], his lands, goods, or effects, by or at the suit of us his said creditors, or any of us, or any other person or persons, by or through our or any of our means, act, privity, consent, or procurement, for our said respective debts, or any of them, within the said period of years from the date hereof; PROVIDED NEVERTHELESS, and it is hereby declared, that if the said [*debtor*] shall depart this life, or shall abscond from his creditors at any time during the space of two years, or if all the now creditors of the said [*debtor*], or some person or persons by them duly authorised, shall not seal and execute these presents on or before the day of next, then and in all or any of the said cases, these presents, and the license and liberty hereby given, shall thenceforth cease and be utterly void. IN WITNESS, &c.

Proviso for avoiding license in case debtor dies or absconds; or in case all the creditors do not execute the license.

# LETTERS PATENT (*a*).

LETTERS PATENT *granting the* PROPERTY *in a* NEW INVENTION.

LETTERS PATENT FOR A NEW INVENTION.

WILLIAM THE FOURTH, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING; WHEREAS [A. B.] hath by his petition humbly represented unto us, that after considerable application and expense, he hath [*state the allegation of the petition*]; and the petitioner therefore most humbly prayed we would be graciously pleased to grant, &c. [*state the prayer of the petition*]; *And* we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request; NOW KNOW YE therefore that we of our special grace, certain knowledge, and mere motion, *Have* given and granted, and by these presents, for us, our heirs, and successors, *Do* give and grant unto the said [A. B.], his executors, administrators, and assigns, our special license, full power, sole privilege, and authority, that he the said [A. B.], his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy and deputies, servants and agents, or such others as he the said [A. B.], his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time, and at all times hereafter during

Recital of the petition,

and the grant of the request.

Grant of letters patent.

(*a*) The numerous late works on the law of patents preclude the necessity of entering into the consideration of the subject. The reader is referred to the work of Mr. Holroyd, which has just been published, for the requisite information.

LETTERS PATENT FOR A NEW INVENTION.

the term of years herein expressed, shall and lawfully may make, use, exercise, and vend the said invention within that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed, [and also within all our colonies and plantations abroad], in such manner as to him the said [A. B.], his executors, administrators, and assigns, or any of them, shall, in his or their discretion, seem meet; *And* so that he the said [A. B.], his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage, from time to time, coming, growing, accruing and arising, by reason of the said invention, for and during the

To hold for 14 years.

term of years herein mentioned, To HAVE, HOLD, RECEIVE, AND ENJOY, the said license, power, privileges, and advantages, hereinbefore granted, or mentioned to be granted, unto the said [A. B.], his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years, from the date of these presents next and immediately ensuing, and fully to be complete and ended, according to the statute in that case made and

Prohibition of all other persons using the invention.

provided; *And* to the end that the said [A. B.], his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit, and the sole use and exercise of the said invention, according to our gracious intention hereinbefore declared, we do by these presents, for us, our heirs, and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within that part of the said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed aforesaid, [and also within all our colonies and plantations abroad] that neither they, nor any of them, at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly, do make, use, or put in practice the said invention, or any part of the same, so attained unto by the said [A. B.] as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make, or cause to be made, any addition thereunto, or subtraction from the same,

LETTERS PATENT FOR A NEW INVENTION.

whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the license, consent, or agreement of the said [A. B.], his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf, upon such pains and penalties as can or may be justly inflicted on such offender or offenders, for their contempt of this our royal command; and further to be answerable to the said [A. B.], his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned; *And moreover*, we do by these presents, for us, our heirs, and successors, will and command, all and singular the justices of the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever, of us, our heirs, and successors for the time being, that they or any of them, do not nor shall at any time hereafter during the said term hereby granted, in anywise molest, trouble, or hinder the said [A. B.], his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due or lawful use or exercise of the aforesaid invention, or any thing relating thereto: PROVIDED ALWAYS, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted, it shall be made appear to us, or our successors, or any six or more of our privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention, as to the public use and exercise thereof, in the said part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed aforesaid, [and also in our colonies and plantations abroad], or not invented or found out by the said [A. B.] as aforesaid, then upon signification thereof, to be made by us, our heirs or successors, under our or their signet or privy seal, or by the lords of our and their privy council, or any six or more of them, under their hands, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes: PROVIDED ALSO that these our letters patent, and any thing hereinbefore contained, shall not extend, or be con-

Command that no person shall molest the use of the invention.

Proviso avoiding patent, if falsely obtained, or if not new.

LETTERS PATENT FOR A NEW INVENTION.

strued to extend, to give privilege unto the said [A. B.] his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever, which hath heretofore been invented or found out by any other of our subjects whatsoever, and publicly used and exercised in that part of our United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed [or our colonies or plantations abroad], unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof; it being our will and pleasure that the said [A. B.], his executors, administrators, and assigns, and all and every other person and persons to whom like letters patent have been already granted as aforesaid, shall distinctly use and practise their several inventions, by them invented or found out, according to the true intent and meaning of the said respective letters patent, and of these presents: PROVIDED LIKEWISE nevertheless, and these our presents are upon this express condition, that if the said [A. B.], or any person or persons, which shall or may, at any time or times hereafter during the continuance of this grant, have or claim any right, title, or interest, at law or in equity, of, in, or to the power, privilege, and authority of the sole use and benefit of the said invention hereby granted, shall make any transfer or assignment, or any pretended transfer or assignment of the said liberty or privilege, or any share or shares in the profits thereof, or shall declare any trust thereof to or for any number of persons exceeding the number of five, or shall open or cause to be opened any book or books for public subscriptions to be made by any number of persons exceeding the number of five, in order to the raising any sum or sums of money, under the pretence of carrying on the said liberty or privilege hereby granted, or shall by him or themselves or his or their servants or agents, receive any sum or sums of money whatsoever, of any person or persons whatsoever exceeding the number of five, for such and the like intents and purposes, or shall presume to act as a corporate body, or shall divide the benefit of these our letters patent, or the liberty and privileges hereby by us granted, into any number of shares, exceeding the number of five, or shall

Present grant not to prejudice any former grants.

Patent not to be devised or assigned to more than five persons.

commit or do, or procure to be committed or done, any act, matter, or thing whatsoever, during such time as any person or persons shall have any right or title, either at law or equity, in or to the said premises, which shall be contrary to the true intent and meaning of a certain act of parliament, intitled "An act for better securing certain powers and privileges intended to be granted by his Majesty by two charters for assuring of ships or merchandizes at sea, and for lending money upon bottomry, and for restraining certain extravagant and unwarrantable practices therein mentioned;" or in case the said power, privilege, or authority, shall at any time hereafter become vested in, or in trust for more than the number of persons or their representatives, at any one time, (reckoning executors and administrators as and for the single person they represent, as to such interest as they are or shall be entitled to, in right of such their testator or intestate) that then, and in any of the said cases, these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: PROVIDED ALSO, that if the said [A. B.] shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be enrolled in our high court of Chancery within [*one calendar month*] next immediately after the date of these our letters patent, that then these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding: AND LASTLY, we do by these presents, for us, our heirs, and successors, grant unto the said [A. B.], his executors, administrators, and assigns, that these our letters patent, or the inrolment or exemplification thereof, shall be in and by all things good, firm, valid, sufficient, and efficient in the law, according to the true effect and meaning thereof, and shall be taken, construed, and adjudged in the most favorable and beneficial sense for the advantage of the said [A. B.], his execu-

LETTERS PATENT FOR A NEW INVENTION.

Specification to be enrolled within one calendar month.

Patent to be construed favourably for patentee.

LETTERS PATENT FOR A NEW INVENTION.

tors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs and successors, in that part of the said United Kingdom of Great Britain and Ireland called England, our dominion of Wales, and town of Berwick upon Tweed aforesaid [and all our colonies and plantations abroad], and amongst all and every the subjects of us, our heirs, and successors whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention, or of the materials thereto conducing and belonging. In witness whereof we have caused our letters to be made patent. Witness ourself, at our palace of W., this day of , in the year of our reign.

By writ of Privy Seal.

[*Clerk of Letters Patent.*]

---

SPECIFICATION OF A PATENT.

## Specification *of a Patent.*

Recital of letters patent.

To all to whom these presents shall come, I, [A. B.] of, &c. send greeting: Whereas his most encellent Majesty William the Fourth, by his letters patent, under the great seal of Grent Britain, bearing date at Westminster, the day of , in the year of his reign, did, for himself, his heirs, and successors, give and grant unto me his especial license, that I the said [A. B.], my executors, administrators, and assigns, or such others as I the said [A. B.], my executors, administrators, or assigns, should at any time agree with, and no others, from time to time, and at all times during the term of years therein expressed, should and lawfully might make, use, exercise, and vend, within England, Wales, and the town of Berwick upon Tweed, [and also within all his Majesty's colonies and plantations abroad] my invention of [*here describe the*

*invention, in the words of the patent*], in which said letters patent there is contained a proviso, obliging me the said [A. B.], by an instrument in writing under my hand and seal, particularly to describe and ascertain the nature of my said invention, and in what manner the same is to be performed, and to cause the same to be enrolled in his Majesty's high court of Chancery, within [*one calendar month*] next immediately after the date of the said recited letters patent, as in and by the same, reference being thereunto had, will more fully and at large appear; NOW KNOW YE, that in compliance with the said proviso, I the said [A. B.] do hereby declare, that the nature of the said invention, and the manner in which it is to be performed, is described and ascertained as follows, that is to say; [*here state the particulars*], as the same [*if a machine*] is further explained or shewn by the plan delineated in the margin of these presents: IN WITNESS whereof I the said [A. B.] have hereunto set my hand and seal, the day of , in the year of our Lord 183 .

SPECIFICATION OF A PATENT.

Specification.

A. B. (L. S.)

Taken and acknowledged by the above named [A. B.], at the public office, Southampton Buildings, Chancery Lane, this day of , 183 , before me,

[*Master in Chancery.*]

PATENT AND CHARTER.

## A Charter and Letters Patent of Incorporation *of a Benevolent Society.*

WILLIAM THE FOURTH, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, To ALL TO WHOM THESE PRESENTS SHALL COME, GREETING; WHEREAS our trusty and well beloved , Esq., member of our Royal Academy of Arts; our trusty and well beloved Sir [A. B.]; and others of our loving subjects, have, under our royal patronage, formed themselves into a society for the protection and encouragement of [*name*], and have subscribed considerable sums of money for the purposes aforesaid, and have humbly besought us to grant to them, and to those who shall hereafter subscribe to the said society, our royal charter of incorporation for the purposes aforesaid: Now KNOW YE, that we, being desirous of encouraging a design so laudable and salutary, *Have*, of our especial grace, certain knowledge, and mere motion, willed, granted, and declared, and we *Do* by these presents, for us, our heirs and successors, will, grant, and declare, that the said and , and all others of our loving subjects who have subscribed or shall hereafter subscribe to the said society, according to such regulations or bye-laws as shall be hereafter agreed upon or enacted, shall, by virtue of these presents, be the members of, and form one body politic and corporate, by the name of "The Society for," &c.; *And* we do hereby will, grant, and declare, that the said society shall be for [*here state the objects of the society*]; *And* we will, grant, and declare, that the members for the time being of the said body politic and corporate shall, by the name aforesaid, have perpetual succession, and a common seal, with full power and authority to alter, vary, break, and renew the same at their discretion; and by the same

Recital of formation of the society,

and prayer to have a royal charter.

Grant of charter to certain members.

Objects of the society.

The society to have a common seal, and power to sue and be sued.

name to sue and be sued, implead and be impleaded, and answer and be answered unto, in every court of us, our heirs, and successors, and be for ever able and capable in the law to purchase, receive, possess, and enjoy, to them and their successors, any goods and chattels whatsoever. *And also* be able and capable in law (notwithstanding the statutes of mortmain), to take, purchase, hold, and enjoy, to them and their successors, a hall or college, and any messuages, lands, tenements, or hereditaments whatsoever, the yearly value of which, including the scite of the said college or hall, shall not exceed in the whole the sum of pounds, computing the same respectively at the rack-rent which might have been had or gotten for the same respectively, at the time of the purchase or acquisition thereof; *And*, moreover, with full power and authority to act in all the concerns of the said body politic and corporate, for the purposes aforesaid, as fully and effectually, to all intents, effects, constructions, and purposes whatsoever, as any other of our liege subjects, or any other body politic or corporate, in our United Kingdom of Great Britain and Ireland, not being under any disability, might do in their respective concerns: *And* we will, grant, and declare, that there shall be general meetings of the members of the said body politic and corporate, to be held from time to time, as hereinafter mentioned, and that there shall always be two committees and a council to direct and manage the concerns of the said body politic and corporate; *And* that the general meetings, committees, and council, shall have the entire direction and management of the same, in the manner, and subject to the regulations, hereinafter mentioned; *And* that at all general meetings, and meetings of the committees and the council, the majority of the members present, and having a right to vote thereat respectively, shall decide upon the matters proposed at such meetings; *And* the person presiding therein shall not vote, except in the case of an equality of numbers, when such person shall have a casting vote: *And* that the committee of the said society shall consist of the president of the said society, and not less than eight other members, to be elected out of the subscribers to the said society; *And* that the said council shall consist of the president of

To have a hall or college, lands, messuages, or tenements, of the yearly value of *l.*

General meetings, committees, council, with their powers.

The president to have a casting vote only.

Committee, who to consist of.

Council, who to consist of.

CHARTER AND LETTERS PATENT.

Members eligible for committees and council.

A. B. to be the first president.

Power to hold separate and distinct general meetings to elect officers, their members, &c.

Power to the general meetings of the members to make by-laws for the government of the same.

Committees of the society to have the management and distribution of the funds.

Council to regulate and control all matters not vested exclusively in any other branch of the body politic.

the said society, and ten other members, to be elected out of the subscribers to the said society; *And* the eligibility to be members of the committee, and also members of the council at the same time, shall co-exist; *And* that the first members of the committees and the council shall be elected within one year after the date of this our charter; *And* that the said [A. B.] shall be the first president of the said society: *And* we do further will, grant, and declare, that it shall be lawful for the subscribers to the said society to hold separate and distinct general meetings once in the year, or oftener, for the purposes hereinafter mentioned, (that is to say) that the general meetings of the subscribers to the said society shall elect the president, members of the committee, and other officers of the said society; *And* that, subject to the powers hereinafter given to the council, the said general meetings shall regulate and control all the affairs and concerns of the said society, and shall make and establish such by-laws as they shall deem to be useful and necessary for the government thereof, with full power and authority to alter, vary, amend, and rescind such by-laws, at their discretion; *And* that, subject and without prejudice to the powers given to the general meetings respectively, and the council, the committee of the said society shall have the management and distribution of the income of the said society; and also the entire management and superintendence of all the affairs and concerns thereof; and shall or may, but not inconsistently with, or contrary to any existing by-laws, do all such acts and deeds as shall appear to them necessary or essential to be done, for the purpose of carrying into effect the objects and views of the said body politic and corporate, relating to the said society; *And* we further will, grant, and declare, that the council shall regulate and control all the affairs and concerns of the said body politic and corporate, which are, shall, or may not be exclusively vested in any other branch thereof, and shall do all acts and deeds in respect thereof; and shall make and establish such by-laws as they shall deem to be useful and necessary for the government thereof, with full power and authority to alter, vary, amend, and rescind such by-laws at their discretion; *And*

CHARTER AND LETTERS PATENT.

we do further will, grant, and declare, that the whole property of the said body politic and corporate, shall be vested, and we do hereby vest the same, solely and absolutely in such members of the corporation who have subscribed or shall hereafter subscribe to the said society; *And* that they shall have full power and authority to sell, alienate, charge, or otherwise dispose of the same as they shall think proper; but that no sale, mortgage, incumbrance, or other disposition of the said messuages, lands, tenements, or hereditaments, shall be made without the approbation and concurrence of one general meeting, and a confirmation of a subsequent general meeting of the subscribers thereto; *And* we lastly declare it to be our royal will and pleasure, that no resolution or by-law shall on any account or pretence whatsoever be made by the said body politic or corporate, in opposition to the general scope, true intent, and meaning of this our charter, or the laws of our realm; and that, if any such rule or by-law shall be made, the same shall be absolutely null and void, to all intents, effects, constructions, and purposes whatsoever. In witness whereof we have caused these our letters to be made patent. Witness ourself at our palace at Westminster, this day of , in the year of our reign. By writ of privy seal.

Property of the society, in whom vested.

Power to sell, alienate, or otherwise dispose of the same, but not without the consent and approbation of two general meetings of the subscribers.

All by-laws and resolutions void, made in opposition to the true intent and meaning of charter.

Scott, L. S.

ADDITIONAL CHARTER.

## A CHARTER *and* LETTERS PATENT, *granting* ADDITIONAL POWERS *to those granted by a* FORMER CHARTER.

WILLIAM THE FOURTH, by the grace of God, &c. To all to whom these presents shall come, GREETING: WHEREAS the corporation, called by the name of , have, by their petition, humbly represented unto us, &c. [*recite the former patent*] AND WHEREAS the said corporation have ever since been a subsisting body, and to the best of their endeavours acted under and in pursuance of the said letters patent, and been found to be of common good and benefit, according to the original design and institution of the society; but that the said corporation have, at several times and on sundry occasions, found themselves reduced to great inconveniences and difficulties, for want of some further powers and authorities, than are contained in the said letters patent, or which, by the by-laws thereby authorized to be made, they are empowered to use and exercise, and which, if granted them, they humbly conceive, and are advised, would tend much to the good and benefit, as well as relief and harmony, of the said society; [*here any special inconvenience arising from the insufficiency of the former charter may be stated*] and having humbly prayed us that we would be graciously pleased to grant unto the said corporation such further powers and authorities, and in such manner as to us shall seem meet; WE, taking the premises into our royal consideration, are graciously pleased to grant unto the said corporation, and their successors, such additional powers and authorities as are hereinafter mentioned and contained; NOW, KNOW YE therefore that we, of our special grace, certain knowledge,

Recital of former patent.

That corporation has been in existence,

but have experienced inconveniences from their limited powers.

Agreement to grant additional powers.

Grant of additional powers.

ADDITIONAL CHARTER.

and mere motion, *Have* granted, declared, ordained, and directed, and by these presents, for us, our heirs, and successors, do grant, declare, ordain, and direct, that [*insert such additional provisions as may be requisite*] *And lastly*, we do hereby, for us, our heirs, and successors, grant unto the said corporation and their successors, that these, our letters patent, or the inrolment or exemplification thereof, shall be, in and by all things, good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, notwithstanding the not fully or duly reciting the said recited letters patent, or the date thereof, or any other omission, imperfection, defect, matter, cause, or thing whatsoever, to the contrary thereof, in anywise notwithstanding. In witness whereof we have caused these our letters to be made patent. Witness ourselves, at , the day of , in the year of our reign.

By writ of privy seal.

# LICENSE.

BY PATENTEE.

## License *by* Patentee *of the benefits of a* Patent.

Recital of letters patent.

To all to whom (*a*) these presents shall come, [*patentee*], of, &c. sends greeting: Whereas his late Majesty King George the Third, by letters patent bearing date the day of , granted unto the said [*patentee*] the sole and exclusive license, power, privilege, and authority, of making, using, and vending a certain [*describe invention*] for the term of fourteen years from the date thereof; And whereas the said [*patentee*] hath agreed to permit [*licensee*] of the city of , to make, sell, and dispose of the same in the said city of , in the manner hereinafter mentioned. Now these presents witness, that in consideration of the sum of pounds, paid by the said [*licensee*] to the said [*patentee*], at or immediately before the execution of these presents (the receipt whereof the said [*patentee*] doth hereby acknowledge, and of and from the same and every part thereof, doth hereby discharge the said [*licensee*], his executors, administrators, and assigns), *He*, the said [*patentee*], *Hath* given and granted, and by these presents *Doth* give and grant, unto the said [*licensee*], full and free license, privilege, and permission, to make, use, exercise, sell, and dispose of the said [*invention*] in the said letters patent mentioned or referred to, according to the specification thereof, duly inrolled in the High Court

Agreement to grant license.

Grant of license annually.

---

Stamp.

(*a*) The license is usually required by the letters patent to be under seal. It will therefore require a deed stamp.

Assignment of patents.

It has been seen, *ante*, p. 187, that it is made a condition of granting a patent, that it shall not be assigned to more than five persons. A voluntary license would probably be held to come within this clause, although an assignment by operation of the law, as the bankruptcy of the patentee, whereby all his creditors become interested in the patent, is not within the restriction. *Bloxam* v. *Elsee*, 5 B. & C. 169.

of Chancery, for the term of years from the date hereof; PROVIDED ALWAYS, and it is hereby expressly agreed, that if the said [*licensee*] shall depart this life, or shall at any time hereafter assign or make over, or attempt to assign or make over, the said license hereby given, or the benefit thereof, or of any part thereof, to any person or persons whomsoever, or the same shall, by the bankruptcy or insolvency of the said [*licensee*], or by any other means, become vested in any other person or persons, without the consent in writing of the said [*patentee*], his executors, or administrators, these presents, and every thing herein contained, shall cease and be utterly void, to all intents and purposes whatsoever, any thing herein before contained to the contrary notwithstanding. IN WITNESS.

BY PATENTEE.

Agreement that license shall be void on alienation, bankruptcy, &c.

---

LICENSE *by* PATENTEE *to a Person to enjoy the Benefits of the* PATENT *at a certain Place and its Neighbourhood.*

BY PATENTEE.

THIS INDENTURE, made the day of , BETWEEN [*patentee*] of, &c. of the one part; and [*licensee*] of, &c. of the other part. WHEREAS his majesty's letters patent, bearing date the day of , have been granted to the said [*patentee*] for an improved machine used in the process of manufacturing , for the term of fourteen years. AND WHEREAS the said [*patentee*] has agreed with the said [*licensee*] to permit and allow him the exclusive use and benefit of the said patent, within the city of , and within miles round the same, during the remainder of the said term, for which the same has been so granted as aforesaid, upon the terms and in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum hereinafter covenanted to be paid by the said [*licensee*], HE, the said [*patentee*], for himself, his heirs, executors, and administrators, ***Doth*** hereby COVENANT and agree

Grant of letters patent.

Testatum whereby patentee covenants that licensee shall enjoy patent for residue of term.

BY PATENTEE.

with the said [*licensee*], his executors and administrators, that he, the said [*licensee*], his executors and administrators, shall have full and exclusive license and authority, during the continuance of the residue and remainder of the said term of fourteen years, for which the said letters patent have been granted as aforesaid, to use and work, and to vend and sell, the which shall be made or manufactured from the machine specified in the said letters patent, for his and their benefit and advantage, together with the powers, authorities, liberties, and privileges granted and reserved by the said letters patent to the said [*patentee*], his executors, administrators, and assigns. AND the said [*licensee*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and agree with the said [*patentee*], his executors and administrators, in the manner following (that is to say): that he, the said [*licensee*], his executors, or administrators, shall and will pay to the said [*patentee*], his executors, administrators, and assigns, during the continuance of the said letters patent, the sum of *l.*, or at that rate, for every hundred weight of which he, the said [*licensee*], his executors, administrators, or assigns, shall work, prepare, and perfect by means of the said letters patent; *And* that he, the said [*licensee*], his executors, administrators, or assigns, shall and will, at the end of each successive quarter of a year from the day of the date of these presents, deliver to the said [*patentee*], his executors, administrators, or assigns, a just and true account, in writing, of all the which he, the said [*licensee*], shall have prepared and perfected by means of the said patent; *And* shall and will, at the end of every year during the continuance of the said patent, pay unto the said [*patentee*], his executors, administrators, or assigns, the like sum of pounds for every hundred weight not exceeding hundred weights, whether or not the same shall have been actually worked and completed by means of the said letters patent: AND it is hereby further agreed, that in case any of the said quarterly payments hereinbefore reserved, shall be in arrear for the space of days, or if the said [*licensee*], his executors, or administrators, shall neglect or fail to perform any of

Covenant by licensee to pay the sum of *l.* for every hundred weight of patent goods,

and deliver quarterly accounts thereof.

Agreement that if payments shall be in arrear or covenants shall not be performed, patentee may revoke license.

BY PATENTEE.

the covenants therein contained, it shall be lawful for the said [*patentee*], his executors, administrators, or assigns, by any deed or writing under his or their hand and seal, to revoke and annul these presents, he or they giving days' notice in writing to the said [*licensee*], his executors, or administrators, of such revocation, or leaving the same at their or his last or usual place of abode: AND the said [*patentee*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and agree with the said [*licensee*], his executors, and administrators, that the said patent is good, valid, and subsisting in the law, for all the purposes therein explained, and is not surrendered, forfeited, or become void or voidable; *And* that the specification of the said invention is truly and duly made and inrolled, according to the conditions in the said letters patent contained; *And*, also, that he, the said [*patentee*], now hath in himself good right, full power, and lawful and absolute authority, to give to the said [*licensee*], his executors, or administrators, the full and free license and authority to use the said patent and invention, according to the true intent and meaning of these presents; *And* that the right to use the said patent and invention shall and may be quietly and peaceably exercised, used, and enjoyed by the said [*licensee*], his executors, or administrators, without any let, suit, denial, interruption, or disturbance whatsoever, by or from any person or persons whomsoever; *And*, also, that he, the said [*patentee*], his executors, and administrators, and all and every other person or persons having or claiming any right or interest to or in the said patent, shall and will at all times hereafter, at the request, costs, and charges of the said [*licensee*], his executors, or administrators, make, do, execute, and perfect every such act, deed, matter, and thing as shall be necessary for vesting in the said [*licensee*], his executors, or administrators, the full and absolute license and authority to use the said patent invention, in manner and form aforesaid; *And*, also, that in case of any infringement of the said patent, by any person or persons whomsoever, which shall obstruct, lessen, or interfere with the license or authority hereinbefore granted to the said [*licensee*], his

Covenant by patentee that the patent is good,

and that specification is enrolled,

and that patentee has good right to give the license.

and for quiet enjoyment;

and for further assurance;

and that patentee will protect patent;

BY PATENTEE.

executors, and administrators, he, the said [*patentee*], his executors, administrators, or assigns, will, at the costs and charges of the said [*licensee*], his executors, or administrators, and for his or their benefit, commence all proper and necessary proceedings, either at law or in equity, against such person or persons, and carry on such proceedings to effect, so as to obtain damages for such infringement, and prevent the continuance thereof; *And*, further, that if, at any time or times hereafter, during the continuance of the said patent, he, the said [*patentee*], shall invent, discover, or make any other improvement or improvements in the said machine, then and in every such case he, the said [*patentee*], shall and will communicate such improvement or improvements to him, the said [*licensee*], his executors, or administrators; and, if he or they shall approve the same, then he, the said [*patentee*], shall and will grant to him or them license and authority to use and practice the same during the continuance of the said letters patent, and whether the said [*patentee*] shall have obtained his majesty's letters patent thereof or not. IN WITNESS, &c.

and will communicate all fresh improvements.

---

TO CUT TIMBER

## LICENSE *from a Lord of a Manor to* CUT TIMBER.

Manor of } BE IT REMEMBERED, that on the
} day of , license was granted by [*lord*] lord of the said manor, unto [*copyholder*], one of the customary tenants of the same manor, to fell, within months from the day of , oaks, elms, ash-trees, and beech-trees, now growing upon certain tenements called , within the manor aforesaid, to be chosen and set out by the said [*copyholder*], and the same to convert to his own use, or sell and dispose of at his free will and pleasure, without any account to be rendered for the same. And for this license the said [*copyholder*] hath given unto the said lord, pounds.

### LICENSE *by a* LORD OF A MANOR *to* LEASE.

TO LEASE.

Manor of } BE IT REMEMBERED, that on the } day of , the lord of the said manor, out of court, by his steward duly authorized in that behalf, granted leave unto [*copyholder*], of, &c., one of the customary tenants of the same manor, to demise and let ALL, &c. unto any (*a*) person or persons whomsoever, being willing to take the same, for the term of years, to commence from the day of next ensuing, saving always unto the lord of the said manor for the time being, his heirs, sequels in right, and assigns, all and all manner of fines, rents, services, and customs, before due and of right accustomed to be paid, with full power for him and them from time to time, and at all times during the said term, to enter into the said premises, or into any part thereof, to seize, distrain, and take any distress or other lawful remedy for recovering thereof, as freely as if this license had not been given. *And* for this license the said [*copyholder*] hath given unto the said lord the sum of pounds, being for each year of the said term.

License to lease.

---

(*a*) Or, if so intended,

" unto [*particular lessee*] of, &c., for the term of, &c."

Particular lessee.

# MANUMISSION.

As to the manumission of slaves in the colonies.

THE laws as to the manumission of slaves differ very considerably in the different colonies.

Thus, in Jamaica, no person can manumit a slave until he has given security to the churchwardens of the parish in which he resides for the payment of 5*l.* per annum to such slave during his life. Col. Act. 15 Geo. III. c. 18. And where a person by his will manumits, or directs to be manumitted, any slaves belonging to him, his estate will be liable to the payment of the said annual sum, to be paid to any slave manumitted. 57 Geo. III. c. 25. And see, also, the 5 Geo. IV. c. 21.

In Granada, persons manumitting slaves must pay 100*l.* currency per slave to the public treasurer, who must certify such payment on the back of the manumission, or it will be void. Col. Act. 38 Geo. III. And see 32 Geo. III., 47 Geo. III., and 58 Geo. III.

In Dominica, a person manumitting a slave must give fourteen days' previous notice thereof, and swear before a judge of the Common Pleas that the same is not to defraud any one or relieve himself from the burden of maintaining such slave, and that the slave wishes to be free. 6 Geo. IV.

In Tobago, no person above ten years can be manumitted till his manumission is indorsed by three medical practitioners of the colony, certifying that such person is of sound mind, good health, and able to work to maintain himself. 4 Geo. IV.

In the Bahamas, no slave can be manumitted on account of age, sickness, or infirmity. 4 Geo. IV. c. 6.

In Bermuda, previous to September, 1814, no slave under forty years could be manumitted, except under condition of his leaving the colony within three months, 46 Geo. III.; and if the slave was above forty years of age, the owner was required to pay 50*l.* into the public treasury. 46 Geo. III. This act does not appear to have been renewed.

In Antigua, a person manumitting a slave incapable of service by age, infirmity, or accident, must pay to the treasury 300*l.* currency, to the interest of which the slave will be entitled for his life. 38 Geo. III. And by the same statute the same regulations prevail in Montserrat, Nevis, and the Virgin Islands.

In St. Christopher's, a person desirous of manumitting a slave must pay to the treasurer 500*l.* currency, having first petitioned the legislature for leave so to do. 42 Geo. III.

In Trinidad, a slave may purchase his own freedom, or that of his rela-

tives; and if an unfair price be demanded, all persons interested in the slave may be summoned before the chief justice of the island. Order of King in Council, 10 Mar. 1824.

In Demerara and Essequibo, persons desirous of manumitting slaves must petition the Court of Policy; and a fine, to be fixed by the court, must be paid, before the manumission is complete. Governor's Order, issued 6th April, 1815.

The deed of manumission must be also inrolled according to the respective regulations of the different islands. The laws of the colony should for this purpose be resorted to, if possible; but, if they cannot be obtained, the publication of Mr. Howard on the Laws of the Colonies may be advantageously consulted.

---

### MANUMISSION *of a Male Slave.*

MANUMISSION.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [A. B.], of, &c., merchant, SEND GREETING. WHEREAS, by a deed-poll or instrument in writing, bearing date on or about the day of , [Y. Y.] did (for the considerations therein mentioned) bargain and sell unto me a negro slave called Peter, *to hold* the said slave unto me, my heirs and assigns, for ever; AND WHEREAS I am desirous of enfranchising and manumitting the said slave. NOW KNOW YE that, I *Have* manumitted, enfranchised, and made free, and by these presents *Do* manumit, enfranchise, and make free, the said slave called Peter, so that neither I, nor my trustees, executors, or administrators, nor any or either of them, shall from henceforth have, claim, challenge, or demand any right or title to the said slave, or his issue or progeny; but that the said slave and his issue and progeny, now or hereafter to be born, shall from henceforth for ever hereafter be free, to all intents and purposes whatsoever. IN WITNESS, &c.

Recital of conveyance of slave.

Desire to enfranchise.

Manumission.

# MEMORIAL.

A memorial of conveyances made after September 29, 1709, and of all wills, &c., that may affect any honours, &c., within the county of Middlesex, may be registered; and every conveyance made after such memorial registered shall be void, &c., unless such memorial be registered before the registering of the conveyance under which, &c.

A PUBLIC registry of deeds and instruments affecting lands in particular counties is established by various acts of Parliament. It will be useful to give at length the more important provisions of the act relating to Middlesex, as all the other acts are nearly similar to it. The other acts will afterwards be shortly noticed. The act relating to Middlesex is the 7 Anne, c. 20, and by the first section it is enacted, that a memorial of all deeds and conveyances, which from and after the 29th day of September, in the year of our Lord 1709, shall be made and executed, and of all wills and devises in writing, made or to be made and published, where the devisor or testator shall die after the 29th day of September, of, or concerning, or whereby any honors, manors, lands, tenements, or hereditaments in the said county, may be any way affected by law or equity, may be registered in such manner as is hereinafter directed; and that every such deed or conveyance that shall, after the 29th day of September, be made and executed, shall be deemed fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered at such times and in such manner as is hereinafter directed.

The like of a devise by will. 6 Anne, c. 35, Abr. Ca. Eq. 358.

Registers appointed.

Sect. 2. And for settling and establishing a certain method, with proper rules and directions for registering such memorials as aforesaid, be it further enacted, by the authority aforesaid, that one public office for registering such memorials of and concerning any honors, manors, lands, tenements, and hereditaments, that are situate, lying, and being within the said county, shall be erected and established in manner following; [*the appointment of the register is then provided for.*]

Memorials to be in parchment, &c.

Sect. 5. And be it further enacted, by the authority aforesaid, that all and every memorials so to be entered and registered, shall be put into writing on vellum or parchment, and brought to the said office, and in case of deeds and conveyances, shall be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs,

Memorials of deeds, how to be attested,

executors, or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance; which witness shall, upon his oath before one of the said registers or masters, or before a master in Chancery ordinary or extraordinary, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned in such memorial; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath before the said registers or masters, or before such master in chancery as aforesaid, prove the signing and sealing of such memorial; which respective oaths the said registers or masters, and masters in chancery, are hereby empowered to administer, and shall indorse a certificate thereof on every such memorial, and sign the same.

and how memorials of wills.

Sect. 6. And be it further enacted, that every memorial of any deed, conveyance, or will, shall contain the day of the month and year when such deed, conveyance, or will bears date, and the names and conditions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or will, and the places of their abode, and shall express or mention the honors, manors, lands, tenements, and hereditaments contained in such deed, conveyance, or will, and the names of all the parishes, or where any such honors, manors, &c., are lying or being, that are given, granted, conveyed, devised, or any way affected or charged, by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect; and that every such deed, conveyance, and will, or probate of the same, of which such memorial is so to be registered as aforesaid, shall be produced to the registers or masters at the time of entering such memorial, who shall indorse a certificate on every such deed, conveyance, and will, or probate thereof, and therein mention the certain day, hour, and time on which such memorial is so entered or registered, expressing also in what book, page, and number, the same is entered; and that the said registers or masters shall sign the said certificate, when so indorsed; which certificates shall be taken and allowed as evidence of such respective registries, in all courts of record whatsoever; and that every page of such register-books, and every memorial entered therein, shall be numbered, and the day of the month and year, and hour, and time of the day when every memorial is registered, shall be entered in the margents of the said register-books, and in the margents of the said memorial; and that every such register or master shall keep an alphabetical calendar of all parishes, extra-parochial places, and townships within the said county, with reference to the number of every memorial that concerns the honors, manors, lands, tenements, or hereditaments within the said parish, extra-parochial place, or township respectively, and of the names

Memorials to contain the day and year of the date, and

every such deed, &c., shall be produced to the registers, &c., who shall indorse a certificate, which shall be allowed as evidence.

The page of the register-books, and the memorials entered, shall be numbered.

Register to keep an alphabet of all parishes, &c., and duly file the memorials in order of time.

of the parties mentioned in such memorials; and that such register or master shall duly file every such memorial in order of time as the same shall be brought to the said office, and enter or register the same memorials, in the same order that they shall respectively come to his hands.

If there be more writings than one that affect the same hereditaments, &c., they need be but once named in the memorial, and the dates, &c., of the rest, only to be set down.

Sect. 7. Provided always, and be it enacted, that where there are more writings than one for making and perfecting any conveyance or security, which do name, mention, or in any ways affect or concern the same honors, manors, lands, tenements, or hereditaments, it shall be a sufficient memorial and registry thereof, if all the said honors, manors, lands, tenements, and hereditaments, and the parishes, townships, hamlets, or extra-parochial places wherein the same lie, be only once named or mentioned in the memorial or register of any of the deeds or writings, made for the perfecting of such conveyance or security; and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and to the places of their abodes, be only set down in the memorials or registers of the same, with a reference to the deed or writing whereof such memorial is so registered, that contains or expresses the parcels mentioned in the said deeds, and directions how to find the registering the same.

Memorials of wills to be registered within six months after testator's death, dying in Great Britain, and three years if dying beyond sea.

Sect. 8. Provided also, and it is hereby enacted, that all memorials of wills that shall be registered as aforesaid, within the space of six months after the death of every respective devisor or testatrix dying within the kingdom of Great Britain, or within the space of three years after the death of every respective devisor or testatrix, dying upon the sea, or in any parts beyond the seas, shall be as valid and effectual against subsequent purchasers, as if the same had been registered immediately after the death of such respective devisor or testatrix; anything herein contained to the contrary thereof in anywise notwithstanding.

If the devisee be disabled, the registry within six months after disability removed, shall be sufficient.

Sect. 9. Provided always, that in case the devisee, or person interested in the honors, manors, lands, tenements, or hereditaments, devised by any such will as aforesaid, by reason of the concealment, suppression, or contesting such will, or other inevitable difficulty, without his, her, or their wilful neglect or default, shall be disabled to exhibit a memorial for the registry thereof within the respective times hereinbefore limited; and that a memorial shall be entered in the said office of such contest or impediment, within the space of two years after the death of such devisor or testatrix, who shall die within the kingdom of Great Britain, or within the space of four years after the death of such person who shall die upon the sea, or beyond the seas; then, and in such case, the registry or memorial of such will, within the space of six months next after his, her, or their attainment of such will, or a probate thereof, or removal of the impediment whereby he, she, or they are disabled or hindered to exhibit such memorial, shall be a sufficient registry within the meaning of this act; anything herein contained to the contrary thereof in anywise notwithstanding.

Sect. 10. Provided nevertheless, that, in case of any concealment or suppression of any will or devise, any purchaser or purchasers shall not be disturbed or defeated in his or their purchase, unless the will be actually registered within five years after the death of the devisor or testatrix.

Will concealed, &c., if not registered in five years after the devisor's death, shall not defeat a purchase.

Sect. 11 mentions the fees to be paid to the register.

Sect. 12. And be it further enacted by the authority aforesaid, that every such register or master shall give due attendance at his office every day in the week (except Sundays and holydays), between the hours of nine and twelve in the forenoon, and the hours of two and five in the afternoon, for the despatch of all business belonging to the said office; and that every such register or master, as often as required, shall make searches concerning all memorials that are registered, as aforesaid, and give certificates concerning the same under his hand (if required by any person), testified by two credible witnesses.

Register to give due attendance, and make searches when required.

Sects. 13 and 14 provide for register entering into recognizance for the performance of his duties.

Sect. 16. And be it further enacted by the authority aforesaid, that in case of mortgages whereof memorials shall be returned in the said register-office pursuant to this act, if, at any time after a certificate shall be brought to the said registers or masters, signed by the mortgagee or mortgagees in such mortgage, his, her, or their executors, administrators, or assigns, and attested by two witnesses, whereby it shall appear that all monies due upon such mortgage have been paid and satisfied in discharge thereof, which witnesses shall, upon their oaths before the said registers or masters, or before a master in Chancery, ordinary or extraordinary (who are hereby respectively empowered to administer such oaths), prove such monies to be satisfied and paid accordingly, and that they saw such certificate signed by the said mortgagee or mortgagees, his, her, or their executors, administrators, or assigns; that then, and in such case, the said registers or masters shall make an entry in the margents of the said register-books against the registry of the memorial of such mortgage, that such mortgage was satisfied and discharged according to such certificate, to which the same entry shall refer, and shall after file such certificate upon record in the said register-office.

Upon certificate and proof made to the register, that money due on a mortgage entered on the registry has been satisfied, the register shall make an entry in the margent against the inrolment, &c.

Provided always, and be it further enacted, that this act shall not extend to any copyhold estates, or any leases at a rack rent, or to any lease not exceeding one-and-twenty years, where the actual possession or occupation goeth along with the lease, or to any of the chambers in Serjeant's Inn, the Inns of Court, or Inns of Chancery; anything in this act contained to the contrary thereof in anywise notwithstanding.

This act not to extend to copyhold estates, &c.

Sect. 18. And be it further enacted by the authority aforesaid, that no judgment, statute, or recognizance (other than such as shall be entered into in the name and upon the proper account of her majesty, her heirs and successors, which shall be obtained or entered into after the said 29th

After 29th September, 1709, no judgments (other than such as are entered into in the name of

the queen, &c.) shall bind hereditaments in Middlesex, but from the time a memorial thereof shall be entered.

day of September in the said year of our Lord 1709) shall affect or bind any honours, manors, lands, tenements, or hereditaments, situate, lying, and being in the said county of Middlesex, but only from the time that a memorial of such judgment, statute, or recognizance shall be entered at the said registry-office, expressing and containing, in case of such judgment, the names of the plaintiffs, and the names, additions, and places of abode (if any such be in such judgment) of the defendants, the sums thereby recovered, and the time of the signing thereof; and, in case of statutes or recognizances containing the date of such statute and recognizance, the names, additions, and places of abode of the cognizors and cognizees therein, and for what sums, and before whom the same shall be acknowledged; and that, in order to the making an entry of such memorials or judgments, statutes and recognizances, as aforesaid, the party and parties desiring the same shall produce to, and leave with, the said registers or masters, to be filed in the said public or register office, a memorial of such judgment, statute, or recognizance, signed by the proper officer or his deputy who shall sign such judgment in the same office, or by the proper officer in whose office such statute or recognizance shall be inrolled, together with an affidavit sworn before one of the judges at Westminster, or a master in Chancery, that such memorial was duly signed by the officer whose name shall appear to be thereunto set; which memorial such respective officer is hereby required to give such plaintiff or plaintiffs, cognizee or cognizees, or his, her, or their executors or administrators, or attorney, or any of them, he, she, or they paying for the same the sum of 1*s*. and no more.

The register to make an entry, and, if required, to give a certificate of such memorial, &c.

Sect. 19. And be it further enacted, that the said register or master shall make an entry, and likewise, if required, shall give a certificate under his hand, testified by two credible witnesses, of every such memorial, of any judgment, statute, or recognizance brought to him to be so registered as aforesaid, and then mention the certain day on which such memorial is so registered or entered, expressing also in what book, page, or number the same is entered.

Other acts.

The statutes 2 & 3 Anne, c. 4, 5 Anne, c. 18, and 6 Anne, c. 35, have also established a register of deeds, wills, and other instruments affecting lands in the West-Riding of Yorkshire, at Wakefield. By the 6 Anne, c. 35, a similar registry is established at Beverley as to lands in the East Riding of Yorkshire, and Kingston-upon-Hull; and by the 8 Geo. II. c. 6, a similar registry is established at Northallerton, as to lands in the North Riding of Yorkshire.

So also, by the 15 Car. II. c. 17, and other subsequent acts, 11 Geo. III. c. 78, 36 Geo. III. c. 73, and 1 & 2 Geo. IV. c. 64, provision is made for the registry of all conveyances and charges (except leases for seven years) of the Bedford Level.

Under these acts it has been determined that it will not be sufficient to register the assignment of a lease: the lease itself must be registered. *Honey-*

*comb* v. *Waldron*, 2 Stra. 1064. *Williams* v. *Sorrel*, 4 Ves. 389. And not only the deed creating the power, but the appointment under it, must be registered. *Scrafton* v. *Quincey*, 2 Ves. Sen. 413.

The deed first registered will always prevail at law. *Doe* d. *Robinson* v. *Allsop*, 5 B. & A. 142. But, in equity, if a purchaser or mortgagee has actual notice of a prior unregistered deed or instrument, and such notice can be satisfactorily proved, he will be deprived of all benefit under his registered deed. *Le Neve* v. *Le Neve*, 3 Atk. 646. *Bushel* v. *Bushel*, 1 Sch. & Lef. 102. *Jolland* v. *Stainbridge*, 3 Ves. 478, Sug. V. & P. 8th edit. But registration is not of itself notice, and therefore, if a purchaser or mortgagee obtain the legal estate, he is not affected by a prior equitable registered incumbrance, if he have no actual notice of it. *Morecock* v. *Dickens*, Amb. 678. *Wiseman* v. *Westland*, 1 Yo. & Jer. 117.

A clerical inaccuracy, as a mistake in the name of one of the parties, will not vitiate a memorial. *Wyatt* v. *Barwell*, 19 Ves. 435.

See further, as to memorials, Sug. V. & P. pp. 389, 484, 698, *et seq.* 8th edit., and Wilson on Registry; and as to the memorial of an annuity, see 1 Byth. 330, 338; 2 Byth. 319, Stewart's edit.

By the 55 Geo. III. c. 184, the following stamps are imposed on memorials :— Stamp.

| | | | |
|---|---|---|---|
| Memorials to be registered pursuant to any Act of Parliament made or to be made for the public registering of deeds and conveyances in England . . . | 0 | 10 | 0 |
| And for every piece of parchment, vellum, or paper upon which any such memorial shall be written, after the first, a further progressive duty of . . . . | 0 | 10 | 0 |

See *post*, p. 223, 224.

OF LEASE AND RELEASE.

## MEMORIAL *of Indentures of* LEASE AND RELEASE *(with* AFFIDAVIT *by Witnesses to the Deeds.)*

A MEMORIAL to be registered of indentures of lease and release, bearing date respectively the and days of , the lease made between [A. B.] of, &c. of the one part; and [C. D.] of, &c. of the second part: and the release made between the said [A. B.] of the first part; the said [C. D.] of the second part; and [Z. Z.] of the third part [*insert a full description of the parties*]; BY WHICH said lease the said [A. B.] did bargain and sell unto the said [C. D.], for one whole year; and by which said release the said [A. B.] did grant, bargain, sell, and release unto the said [C. D.], his heirs and assigns, ALL THAT, &c. [*the parcels must be given verbatim, but the general words need not be given*], with their rights, members, and appurtenances, *to hold* to the said [C. D.], his heirs and assigns, to certain uses, for the benefit of the said [C. D.], his heirs and assigns, and as in the said indenture of release is mentioned. WHICH said indentures of lease and release, as to the execution thereof by the said [A. B.], are witnessed by [W. W.], of, &c., and [Y. Y.], his clerk; and the said indenture of release, as to the execution thereof by the said [C. D.], is witnessed by [T. T.], of, &c.; and the said indentures are hereby required to be registered by the said [C. D.] As witness his hand and seal.

(L. S.) [C. D.]

Signed and sealed in the presence of } [*Two Witnesses.*] *(a)*

Witnesses.

(*a*) One of the witnesses to the memorial must be one of the witnesses to the execution of the deeds by a grantor, and he must make oath to that effect, either at the Register Office, or, if he is not able to attend, by affidavit. In the latter case, the affidavit may be as follows, and must be engrossed on

MEMORIAL *of an* ASSIGNMENT OF TERM *to attend the Inheritance (to be written under Memorial of Deeds of Lease and Release.)* OF ASSIGNMENT OF TERM.

A MEMORIAL to be registered of an indenture bearing date, &c., made between [Y. Y.], of, &c., of the first part; the above-named [A. B.], of the second part; the above-named [C. D.], of the third part; and [Z. Z.], of, &c., of the fourth part: purporting to be an assignment of a term of years, to attend the inheritance of the same premises as are mentioned in the above-written memorial. WHICH said indenture of assignment is witnessed, as to the execution thereof, by the above-named [Y. Y.], by [W. W.], of, &c.; and, as to the execution thereof, by the above-named [A. B.] and [C. D.], by [T. T.], of, &c.; and is hereby required to be registered by the said [C. D.] As WITNESS his hand and seal.

(L. S.) [C. D.]

Signed and sealed in the presence of } [*Two witnesses.*]

---

parchment, with a proper stamp, and sworn before a master in Chancery, ordinary or extraordinary :—

" [L. L.], of, &c. maketh oath that he was present and did see [A. B.], of, &c. sign and seal the memorial hereunto annexed, and that the name [A. B.] thereto subscribed is his handwriting. And this deponent further saith, that he was also present and did see the deeds of lease and release referred to in such memorial duly signed, sealed, and delivered by the said [A. B.]

[L. L.]

Sworn at, &c. before me, } [*Master in Chancery.*]

OF BARGAIN AND SALE.

## MEMORIAL *of a* BARGAIN *and* SALE.

A MEMORIAL to be registered of an indenture of bargain and sale, bearing date the day of , and made between [*bargainor*], of, &c., of the one part; and [*bargainee*], of, &c., of the other part: whereby [*bargainor*] did bargain, sell, and confirm unto the said [*bargainee*], and his heirs, ALL, &c. [*parcels verbatim*], to hold unto the said [*bargainee*], his heirs and assigns, for ever; and which said indenture of bargain and sale is intended to be inrolled in one of his majesty's courts of record, at Westminster, and is witnessed by , of, &c., and , of, &c.; and is hereby required to be registered by the said [*bargainee*]. As witness his hand and seal this day of .

(L. S.) [*Bargainee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

MEMORIAL *of a* MORTGAGE *in Fee, by Lease and Release.* OF MORTGAGE IN FEE.

A MEMORIAL to be registered of indentures of lease and release, bearing date respectively the and days of , the lease made between [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part: AND the release being made between the said [*mortgagor*], of the one part; and the said [*mortgagee*], of the other part: By which said lease, the said [*mortgagor*] did bargain and sell unto the said [*mortgagee*], for one whole year; and by which said release the said [*mortgagor*] did bargain, sell, and release unto the said [*mortgagee*], ALL, &c. [*parcels verbatim*], *to hold* unto and to the use of the said [*mortgagee*], his heirs, and assigns, for ever, subject nevertheless to redemption, upon payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, of the sum of pounds, and interest for the same, at the times and in the manner in the said indenture of release expressed. WHICH said indentures of lease and release are respectively witnessed, as to the execution thereof by the said [*mortgagor*], by [*witness*], of, &c.; and by the said [*mortgagee*], is also witnessed by [*other witness*]; and the same are hereby required to be registered by the said [*mortgagee*]. As WITNESS his hand and seal.

(L. S.) [*Mortgagee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

OF MORTGAGE FOR A TERM.

### MEMORIAL *of an* INDENTURE *of* MORTGAGE *for a Term of Years, with a Certificate of Satisfaction.*

A MEMORIAL to be registered of an indenture of mortgage, bearing date the day of , made between the [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part: WHEREBY the said [*mortgagor*] did demise unto the said [*mortgagee*], ALL, &c. [*parcels verbatim*]; *to hold* to the said [*mortgagee*], his executors, administrators, and assigns, for all the term of years, subject nevertheless to redemption, upon payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, at the times and in the manner expressed in the indenture; WHICH said indenture of mortgage, as to the execution thereof by the said [*mortgagor*], is witnessed by [*witness*], of, &c.; and, as to the execution by [*mortgagee*], is witnessed by [*other witness*], of, &c., and [*other witness*], of, &c.; and is hereby required to be registered by the said [*mortgagee*]. AS WITNESS his hand and seal. (*a*)

(L. S.) [*Mortgagee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

---

Certificate of satisfaction.

(*a*) In case of the payment of the mortgage-money, the certificate of the satisfaction may be as follows:—

TO the registers of the county of Middlesex, I, [*mortgagee*], of, &c., (*or executor or administrator of mortgagee*), do hereby certify that [*mortgagor*], of, &c., hath paid and satisfied all principal monies, and interest due

### MEMORIAL *of a* DEED *of* FURTHER CHARGE.

OF FURTHER CHARGE.

A MEMORIAL to be registered, &c., of a deed-poll, under the hand and seal of [*mortgagor*], of, &c., bearing date the day of , in the year of our Lord , indorsed upon an indenture of release, bearing date the day of , and made between, &c., a memorial whereof was registered on the day of , B. , No. ; by which said deed-poll the said [*mortgagor*] did charge a further sum of money by way of mortgage, upon ALL, &c. ; which said deed-poll is witnessed by , of, &c., and , of, &c., and is hereby required to be registered by [*mortgagee*], of, &c. As WITNESS his hand and seal, this day of .

(L. S.) [*Mortgagee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

---

and owing upon an indenture of mortgage, bearing date, &c., made, &c. (*or* indenture of lease and release, bearing date respectively, and made, &c.); a memorial whereof was registered on the day of the same month of . B., No . *And* I do hereby require an entry of such payment and satisfaction, to be made in the register's book wherein the same is registered, pursuant to the act of Parliament in that case made and provided. As WITNESS my hand, this day of .

(L. S.) [*Mortgagee.*]

Signed, and satisfaction acknowledged, in the presence of } [*Two witnesses.*]

OF LEASE.

## MEMORIAL *of a* LEASE.

A MEMORIAL to be registered of an indenture of lease, bearing date the day of , made between [*lessor*], of, &c., of the one part; and [*lessee*], of, &c., of the other part: WHEREBY the said [*lessor*] did demise unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT, &c. [*parcels verbatim*]; *to hold* to the said [*lessee*], his executors, administrators, and assigns, from the day of last past, for years, at the yearly rent of pounds; The execution of which said indenture of lease is witnessed, as to the said [*lessor*], by [*witness*], of, &c., and [*witness*], of, &c.; and, as to the said [*lessee*], by [*witness*], of, &c., and [*other witness*], of, &c., his clerk; and the same is hereby required to be registered by the said [*lessee*]. As WITNESS his hand and seal.

(L. S.) [*Lessee*].

Signed and sealed in the presence of } [*Two witnesses.*]

### MEMORIAL *of an* ASSIGNMENT *of a* LEASE.

OF ASSIGNMENT OF LEASE.

A MEMORIAL to be registered of an indenture of assignment, bearing date the day of , made between [*assignor*], of, &c., of the one part; and [*assignee*], of, &c., of the other part: WHEREBY the said [*assignor*] did assign to the said [*assignee*], ALL, &c. [*parcels verbatim*]; (*a*) *to hold* unto the said [*assignee*], his executors, administrators, and assigns, for the residue of the term granted by an indenture of lease, bearing date, &c. but subject to the rents and covenants in the said indenture of lease contained. WHICH said indenture of lease is witnessed, as to the execution thereof, by the said [*assignor*] and [*assignee*], by [*witnesses*], of, &c.; and is hereby required to be registered by the said [*assignee*]. AS WITNESS his hand and seal.

(L. S.) [*Assignee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

---

(*a*) It seems to be the practice in memorializing an assignment, to describe the parcels by reference to the lease. But this is very incorrect, and would probably be held to be a fatal defect in a memorial. See Sug. V. & P. 700, 8th edit. Parcels.

OF DEED OF COVENANT TO LEVY A FINE.

### MEMORIAL *of a Deed of Covenant to levy a* FINE.

A MEMORIAL to be registered of an indenture, bearing date, &c., made between [A. B.], of, &c., and [Mary], his wife, of the first part; [C. D.], of, &c., of the second part; and [*trustee*], of, &c., of the third part: WHEREBY it is covenanted and declared, that a certain fine, ***sur conuzance de droit come ceo***, &c., agreed to be levied by the said [A. B.] and [Mary], his wife, as therein mentioned, of and concerning ALL, &c. [***describe the parcels verbatim***], should enure to the uses, intents, and purposes in the said indenture contained; WHICH said indenture is witnessed, as to the execution thereof by the said A. B. and C. D., by [*witness*], of, &c., and [*other witness*], of, &c.; and the same is hereby required to be registered by the said [C. D.]. As WITNESS his hand and seal.

(L. S.) [C. D.]

Signed and sealed in the presence of } [*Two witnesses*].

### Memorial *of an* Appointment.

OF AN APPOINTMENT.

A MEMORIAL to be registered of a deed-poll, under the hand and seal of [*appointor*], of, &c., bearing date the day of , in the year of our Lord : Whereby the said [*appointor*] did appoint to [*appointee*], to the use of the said [*appointee*], his heirs and executors, for ever, of, &c., all, &c., which said appointment is made in pursuance of a power contained in an indenture of release, bearing date the day of , and made between, &c.; a memorial whereof was registered on the day of B. No. , and which said deed-poll is witnessed by , of, &c., and , of, &c., and is hereby required to be registered by the said [*appointee*]. As witness his hand and seal, this day of .

(L. S.) [*Appointee.*]

Signed and sealed in the presence of } [*Two witnesses.*]

OF DEED-POLL.

## MEMORIAL *of a* DEED-POLL.

A MEMORIAL of a deed-poll, bearing date the day of , under the hand and seal of [A. B.], of, &c.: WHEREBY [*according to the nature of the deed*]. The execution of which said deed-poll is witnessed by [*witness or witnesses*], of, &c.; and the same is hereby required to be registered by the said [C. D.]. AS WITNESS his hand and seal, this day of .

(L. S.) [A. B.]

Signed and sealed in the presence of } [*Two witnesses.*]

OF A JUDGMENT.

## MEMORIAL *of a* JUDGMENT.

A MEMORIAL to be registered of a judgment in his majesty's court of , at Westminster, of term, in the year of the reign of king the . Roll, No. , between [A. B.], plaintiff, and [C. D.], defendant; in a plea of debt for pounds, and costs; which judgment was signed in the above cause, on the day of last. Dated the day of .(*a*)

[A. B., *Secondary.*]

(*a*) The affidavit may be as follows:—

[Y. Y.], clerk to , of, &c., maketh oath, That he was present and did see [*secondary*], secondary of the court of , sign the above certificate.

[Y. Y.]

Sworn at , before me, , } [*Master in Chancery.*]

## MEMORIAL *of a* WILL.



A MEMORIAL to be registered of the last will and testament (*or* the probate of the last will and testament), of [*testator*], late of, &c., deceased, bearing date the day of ; whereby the said [*testator*] did give and devise all his (*a*) real estate and effects, whatsoever and wheresoever, unto [*devisee*], his heirs and assigns, for ever. WHICH said will was executed by the said [*testator*], in the presence of [*three witnesses*], of, &c.; and the same is hereby required to be registered by the said [*devisee*]. As WITNESS his hand and seal. (*b*)

(L. S.) [*Devisee*].

Signed and sealed in the presence of } [*Two witnesses.*]

---

(*a*) The parcels should be taken *verbatim* from the will. Parcels.

(*b*) Wills are very seldom registered. A purchaser from a devisee, however, should not complete his contract till the will is duly registered; for, should any person purchase of the heir *bona fide*, without notice of the will, and register his conveyance before the registry of his will, he would be preferred to the purchaser from the devisee. *Jolland* v. *Stainbridge*, 3 Ves. 478. But if the vendor be both heir at law and devisee, the non-registry of the will is immaterial; for, if he sell to any subsequent purchaser, it must be either in the character of heir at law or in the character of devisee. If he sell in this character, the second purchaser must have notice of the will; if he contract in that, the first purchaser has already procured the legal estate. So it seems clear that, if the vendor claim a leasehold estate, either as executor or legatee, the purchaser need not insist upon the testator's will being registered, because no subsequent purchaser can procure a title without notice of the will; and it may be remarked, letters of administration are never registered, and they seem to stand upon the same principle as wills of leasehold estates. Sug. V. & P. 485, 8th edit. Purchase under a will.

It will here be proper to observe, that the title "Memorial," has been completed for a considerable time, but a desire to render the other titles as complete as possible, has delayed the publication of this part until the present time. Notwithstanding the probable introduction of a general Re-

gistry Act, it has been thought that the work would be incomplete if this title were omitted. If an act of this nature comes into operation, the forms given will serve, to a certain extent, as guides for memorials under it. If the act does not pass, the title will have all its original utility.

It will be also proper to observe, that should the proposed bill, or any other effecting a change in the forms used in practice, pass into law, the new forms which will thus be rendered necessary, will be immediately published, either in the work itself or in a supplemental form.

# MORTGAGES. (*a*)

I.—Practical Directions, p. 225.
II.—Who may be Mortgagors, p. 227.
III.—Who may be Mortgagees, p. 230.
IV.—What may be Mortgaged, p. 231.
V.—Of the Mode of effecting a Mortgage, p. 232.
VI.—Of Collateral Securities, p. 251.
VII.—Of Stamping a Mortgage-deed, p. 253.
VIII.—Miscellaneous Points, p. 258.

## I.—Practical Directions.

Duty of the mortgagee's solicitor.

It will be the duty of the solicitor of the mortgagee to see that the security for the money advanced is ample, and the title good. He must compare the abstract delivered with the original instruments there abstracted, and must see that they are sufficiently abstracted. He is then bound to take the opinion of counsel on the validity of the title,(*b*) and he must insert in the abstract a full statement of the deeds, wills, &c., abstracted. The solicitor must also see the whole of the deeds, &c., and he must not be satisfied with an extract, as he will be responsible to his client for any default in this particular.(*c*) The title should be strictly marketable, for as a mortgagee merely wants a security for his money, and not the lands themselves, if he cannot act on his power for sale and his other remedies, he is not able to obtain the object of his loan.

When the value of the property to be mortgaged cannot be easily ascertained, it is usual to call in the assistance of a surveyor to ascertain it, and it is generally stipulated that all expenses attending the survey of the estate shall be paid by the mortgagor.

---

(*a*) The Introductory Observations to this title are by Mr. Stewart.

(*b*) *Ireson* v. *Pearman*, 3 B. & C. 799, S. C., 5 Dow. & Ry. 687.

(*c*) *Wilson* v. *Tucker*, 1 Dow. & Ry. N. P. C. 30, 3 Stark. N. P. C. 154, S. C.

When a person negotiates a mortgage for another, unless he enters into an express stipulation to the contrary, he can only recover 5*s.* for every 100*l.* by way of procuration money. (*d*)

When it is agreed that the money lent shall remain on the security of the premises for any length of time, the agreement should always be introduced into the mortgage deed.

A mortgagee should always inquire into and obtain full information as to the persons in possession of the mortgaged premises, or any part thereof, the terms for which they hold, their rents, &c. These rents pass to the mortgagee as incident to the reversion, or to the person entitled to recover them, see Vol. IV. 400, 401. Where the property is leasehold and the rent is payable to the lessor, the mortgagee should always see that the rent is regularly paid, as frequently, without such precaution, he finds, on entering upon them, that there is a considerable rent in arrear.

Clauses are frequently introduced into mortgage deeds, providing that, if the interest be punctually paid, a reduced sum will be taken, and that if one omission be made in the payment of the reduced sum, then the mortgagee shall ever after be entitled to the full rate of interest. It has been sometimes doubted whether equity would not relieve against this last part of the clause, and force the mortgagee to accept the reduced rate of interest after the day had expired for its payment. In one case, *Brown* v. *Bareham*, 1 P. Wms. 653, it was decided, that the court would relieve if only a short time had elapsed, but not if there had been a long arrear. However, it seems now established, notwithstanding a *dictum* of Lord Eldon to the contrary, (*e*) that if interest be reserved, with an agreement for a reduction of it on punctual payment, the condition must be complied with; but if a lower rate of interest be first reserved, with an agreement that, if it be not paid, a higher rate of interest shall be payable, this will be considered in equity in the nature of a penalty, and relief will be granted accordingly. (*f*)

When several sums of money are advanced by several persons on the same lands, and it is agreed that neither of them shall have priority over the other, it is usual either to limit to each a portion of the lands according to the amount of the money he advances, or to convey the whole of the lands to a trustee for all the mortgagees, with a declaration that the mortgage money is advanced by them in their respective proportions. If the first mode be adopted, the deed will operate as two distinct mortgages; if the latter mode be used, it is all one transaction, and one of the mortgagees

---

(*d*) *Pryce and Another* v. *Williamson*, 2 Bing. 474.

(*e*) *Seton* v. *Slade*, 7 Ves. 273.

(*f*) *Joy* v. *Cox*, Prec. Cha. 160; *Lady Holles* v. *Wyse*, 2 Vern. 289; *Strode* v. *Parker*, 2 Vern. 316; *Nicholls* v. *Maynard*, 3 Atk. 519; *Stanhope* v. *Manners*, 2 Ed. 197; *Milton* v. *Edgeworth*, 5 B. P. C. 313, Toml. edit.

cannot file a bill for a foreclosure of a proportional part of the lands, but all the persons interested in the mortgage must be made parties. (*g*) If the property lie within the registered counties, in Ireland, or the colonies, the deed should be registered without delay, according to the forms required by the laws of the country where it is situated.

When a mortgage debt is paid, care should be taken to indorse a certificate of the discharge of the debt on the mortgage deed, and, where a judgment is given as a collateral security, satisfaction should be entered upon the record. If the lands are copyhold, satisfaction should be entered upon the rolls of the manor. The premises, when default has been made in the payment of the mortgage money, should always be reconveyed to the mortgagor. (*h*)

For other practical directions see the subsequent precedents *passim*.

## II.—Who may be Mortgagors.

All persons not labouring under disability may be mortgagors. The same disability which would prevent the valid sale or leasing of property, will also prevent a valid (*i*) mortgage. And it will be seen that many persons may lease who cannot make any other alienation of their property; it follows, therefore, that although all persons who may mortgage may lease, all persons who may lease may not mortgage. A person born blind, deaf or dumb, may mortgage his estate if he be capable of understanding the transaction. (*k*) An infant cannot mortgage his estate, yet if he execute a mortgage-deed, he will be presumed to be of age until the contrary be shown. (*l*) A married woman may mortgage her separate estate. (*m*) Who may be mortgagors.

A tenant in tail, if he mortgage, will be compelled to suffer a recovery, (*n*) but if he die without suffering a recovery, his issue cannot be compelled to suffer it. (*o*)

By the 28 Geo. II. c. 1, it is enacted, that all contracts whereby a pension of the Chelsea Hospital shall be mortgaged, shall be void. They cannot, therefore, mortgage them; and see *post*, 232. Chelsea pensioners.

An overseer cannot borrow money for parochial purposes. In a late case, an action was brought against all the overseers of a parish, to recover sums of money lent by the plaintiff to one of them. Mr. Justice Bayley Overseers.

---

(*g*) *Palmer* v. *Earl of Carlisle*, 1 Sim. & Stu. 423.
(*h*) See 7 Geo. II. c. 20; 19 Ves. 386; 3 Ves. & B. 51.
(*i*) See Vol. IV. 402, 406.
(*k*) *Elliot's case*, Cart. 53; *Griffin* v. *Ferrers*, Barn. 19.
(*l*) *Loftus* v. *Smith*, 2 S. & L. 649.
(*m*) *Essex* v. *Atkins*, 14 Ves. 542; and see 1 Ves. jun. 189.
(*n*) *Sutton* v. *Stone*, 2 Atk. 101.
(*o*) Gilb. Rep. 164; 2 Vern. 306; 1 P. Wms. 720, and see *post*.

held, that the overseers who had not borrowed the money, in the absence of any express promise, were not liable. *Massey* v. *Knowles*, 3 Stark. 66. The proper mode of raising money for parochial purposes is by an equal pound rate on the landowners of the parish; but in some parishes the overseers are empowered, by a local act of Parliament, to raise sums of money by mortgage for the relief and support of the poor. In a recent case, a question arose on the 51 Geo. III. c. 134, entitled "An act for erecting a chapel of ease at Islington." By this act, the trustees therein mentioned were authorized to appoint a treasurer, clerk, and other officers, and out of the monies to be received by virtue of the act, to pay such salaries to them, as they, the trustees, should think reasonable; and out of the same fund they were to pay to the curate a yearly salary of not less than 150*l.* They were authorized to borrow any sum at interest, not exceeding 30,000*l.*, which monies so borrowed, and the interest thereof, were to be made payable out of the burial-fees, and out of the rates and assessments to be made in pursuance of the act. They were also authorized to grant annuities, provided the money so raised by annuities did not exceed the whole sum intended to be raised for the purposes of the act. They were also authorized to make an assessment on the occupiers of houses, lands, &c. within the parish, not exceeding 2*s.* 6*d.* in the pound on the yearly value, and the rates were to be applied by them to the purposes of that act, during such time as any of the monies to be borrowed upon the credit of the act should remain unpaid, or the annuities granted should have continuance; and, by another clause, the trustees were empowered to levy a distress for non-payment of the rates. The trustees appointed under this act raised a sum of 32,636*l.*, partly by annuity, and partly by borrowing upon common interest; and made a rate to pay the annuities and the interest upon the whole money borrowed. The plaintiff, an inhabitant of the district, objected to this assessment, and permitted himself to be distrained upon for the rate, after which he replieved, and the collector of the taxes, who was the defendant, avowed. The plaintiff, after setting out several clauses in the act of Parliament, pleaded that, before the making of the assessment, the trustees had wrongfully borrowed more than the sum of 30,000*l.*, which by the act they were authorized to do, viz. 136*l.* by annuities, and 2500*l.* by borrowing; and that the rates were made, amongst others, for the purpose of defraying the said annuities and money borrowed. To this the defendant replied, that the burial-fees were insufficient to answer the purposes of the act, and that the annuities granted by the act were in existence, and that it was necessary for the trustees to raise money by assessments in order to carry into effect the purposes of the act, and that the assessments were duly made pursuant to the act, and without stating that the rates were made for the purpose of paying the annuities and money borrowed, or any other purpose whatever. At the hearing, the court observed that there was a material distinction between this case and the cases cited; which were the

cases of poor rates. Overseers of the poor were at liberty from time to time to raise prospectively, by rates, sufficient sums for the relief of the poor; those sums could not be specifically limited; for the overseers could not, *à priori*, say how much they would want for such a purpose. Here, on the other hand, the trustees were authorized, in the first place, to raise a definite sum by loan or annuity, and then to raise by rate so much money as will be sufficient to pay either the common or annuity interest on the sum borrowed, together with such sum as was sufficient to pay the salary of the clergyman. Their power of borrowing was limited, for the sum borrowed was not to exceed the sum of 30,000*l*. The act of Parliament, therefore, gave a special power, and that power ought to be strictly followed; and, as it authorized them to borrow a certain sum of money, and afterwards by rates to pay the interest of the money borrowed, they had no right to borrow beyond the specified amount, or to raise rates to pay interest upon any higher sum. There was a material distinction between this case and that of *Rex* v. *The Mayor and Burgesses of Gloucester*, 5 T. R. 346. There the money to be raised was for the relief and support of the poor. The expense would vary from day to day. It was necessary in such cases to raise money prospectively, so that there might be always some in hand in order to meet whatever demands might occur. In the present case, on the other hand, they were not warranted in raising money to the amount which would be raised by this rate. The party upon whom the distress had been levied, was liable to contribute only an aliquot part of the sum authorized to be raised by the act. In this case the plaintiff was rated and distrained upon for more than he was by law liable to pay, and the defendant had no authority so to distrain upon him. For these reasons their lordships were of opinion that the distress was illegally taken, and held that the plaintiff was entitled to the judgment of the court, which was given accordingly. (*oo*)

Churchwardens are so far incorporated by law, as to be able to sue for the goods of the church, and to bring an action of trespass for them, and also to purchase goods for the use of the parish; but they are not a corporation in such sort as to purchase lands, or to take by grant, except in London, where they are a corporation for those purposes also. Gibs. Cod. 215, and Cro. Jac 532. But by 9 Geo. I. c. 7, the churchwardens, with consent of the major part of the parishioners in vestry, may purchase houses to lodge or employ the poor in. As churchwardens cannot hold lands, if any one give lands to the parish for the use of the church, it must not be to the churchwardens and their successors, but it should be to feoffees in trust to the use intended, which must from time to time be renewed as the trustees die away. Gibs. 215. By act of Parliament, however, churchwardens are not unfrequently found incorporated with powers to sue and hold lands and tenements, and to convey or release such lands, &c. In a late case, an act of Parliament

Churchwardens.

(*oo*) *Ritcher* v. *Hughes*, 2 B. & C. 504.

empowered churchwardens to borrow money and assign over to the respective persons advancing the same, all and every the houses, lands, tenements, &c., of or belonging to the corporation, and also all or any part of the poor rates and assessments to be collected within the parishes, &c., as a security for the repayment of the principal sums with interest; the plaintiff advanced to the corporation the sum of 2000*l.*, the repayment of which was secured to him by a mortgage, pursuant to the provisions of the act. On the mortgagees' calling in their money, the mortgagors alleged that their effects were insufficient to pay the same, and that they were not authorized by the act of Parliament to raise the principal by assessment in the events which had happened, and that the mortgagee, having full knowledge of the only means provided by the act for repayment, must wait till the time arrived when those means could be exerted. The act was evidently founded on the expectation of the corporation becoming rich, and imported, after the reduction of the annual expenditure, that rates should be levied for payment of the sums borrowed. From the great expense of maintaining the poor, the guardians had not been able to form any accumulation, and they rested their defence on the foregoing grounds. The Lord Chancellor, however, thought that the payment of the sums borrowed was one of the purposes for which the money was to be levied; three purposes were specified, payment of interest, maintenance of the poor, and repayment of principal. His opinion, therefore, was, that if a mortgagee called for his money, and if the corporation could not find other means of repayment, they must make assessments, which must be adequate,—first, to the relief of the poor; next, to the payment of interest to all the creditors; and, lastly, to the payment of principal to the particular creditor who demanded it. They had involved themselves in this difficulty, from a confidence that the case would never arise. (*p*)

### III.—Who may be Mortgagees.

Who may be mortgagees.

All persons who are capable of taking and holding an absolute purchase may take and hold as mortgagees; and, therefore, all natural and politic or corporate bodies, who are not disabled by law, may be mortgagees. An alien may be a mortgagee, but he cannot hold against the king, in whom the mortgage estate will vest after office found, but in the mean time it vests in the alien mortgagee; (*q*) though, if the alien die before office found, the law will vest the freehold and inheritance in the king. (*r*) If two persons be mortgagees jointly, the one an alien and the other not, and the alien die,

---

(*p*) *Jones* v. *Montgomery*, 3 Swan. 203, 2 Pow. Mort. by Cov. 1027.
(*q*) 1 Lev. 47; 5 Rep. 52, b.
(*r*) Co. Lit. 2 b.

the entirety will not devolve on the survivor, but the king shall have the moiety of the alien; though until the office found, the moiety survives; (*s*) and it seems that, if the land be reconveyed before office found, the claim of the crown will be defeated. As the alien cannot take any interest in land, except for the benefit of the king, and as the king cannot be a copyholder, it should seem that an alien cannot be a mortgagee of copyholds. (*t*) If he could, the copyhold would escheat to the lord of the manor instead of the crown. (*u*) If an alien take a mortgaged estate in the name of a trustee, the king will not be entitled to the estate mortgaged by inquisition, for at law it will be in the trustee, and not in the alien. The king, however, may sue in Chancery to have the trust executed. (*x*)

Trustees are frequently mortgagees. The only difference in the deed is that a declaration is inserted that the money shall belong to the survivor, whose receipt shall be a sufficient discharge. The declaration of trust that the mortgage-money belongs to the persons beneficially interested, should be by a separate instrument; but see, *post*, p. 415, 427.

### IV.—What may be Mortgaged.

All property, whether real or personal, as a general rule, may be the subject of a mortgage; indeed, every thing which may be assigned or bound for a valuable consideration may also be mortgaged. A rookery can neither be mortgaged or conveyed, as no person can have a property in it. (*y*) Nor can a flowing stream of water, for all the king's subjects have a right to use it; (*z*) but a person who derives a benefit from a water-work, and the water running therein, may mortgage it. (*a*) There cannot be any personal property in a pew in the body of the church, (*b*) it cannot be either granted or mortgaged; (*c*) but if it be situate in the chancel, as it may be the freehold of an individual, it may, perhaps, be susceptible of being either granted or mortgaged, (*d*) and it will, of course, pass with a house as one of its appurtenances. The half-pay of an officer in the army or navy cannot be mort-

---

(*s*) 5 Rep. 5.

(*t*) See 1 Roll. 194, l. 35; Danv. 381; Ab. 15; Hard. 495.

(*u*) Dy. 2 b. m. 303, a.

(*x*) 1 Roll. 194, l. 40; ib. 534, l. 50; *Rex* v. *Holland*, Sty. 20, 40, 75, 84.

(*y*) *Hannam* v. *Mockett*, 2 B. & C. 934, S. C. 4 D. & Ry. 518.

(*z*) *Williams* v. *Morehead*, 2 B. & C. 910, S. C. 4 D. & R. 518.

(*a*) *Davis* v. *Morgan*, 4 B. & C. 8, 6 D. & R. 42.

(*b*) *Brabin* v. *Tradam*, Poph. 140; *Hawkins* v. *Compeigne*, 3 Phil. 11, 16.

(*c*) 1 T. R. 428; *Clifford* v. *Wicks*, 1 B. & A. 507.

(*d*) *Mainwaring* v. *Giles*, 5 B. & A. 361.

gaged, because he has no fixed interest in it, as it depends on the bounty of the crown. (*e*) Nor can an officer pledge his commission. (*f*) A pension for past services may be aliened, but not one for the performance of future duties. (*g*) Nor can the salaries of public officers be mortgaged. (*h*)

If a mill is mortgaged, the stones, tackling, and implements necessary for the use and working a mill pass to the mortgagee. (*i*)

For observations on mortgages of stock, of ships, of colonial property, &c., &c., see the notes to the subsequent precedents.

### V.—Of the Mode of Effecting a Mortgage.

V.—*Covenant to grant mortgage*, p. 232—*Freeholds*, p. 232—*Copyholds*, p. 234—*Leaseholds*, p. 235—*Further charge*, p. 236—*Transfers of mortgages*, p. 236—*Mortgages of equity of redemption*, p. 237—*Of reversion after a term of years*, p. 237—*Of mortgage of equitable property*, p. 238—*Of equitable mortgages*, p. 247.

We shall now consider the different modes of effecting a mortgage of all the usual kinds of property.

Agreement.

It is not unusual, in the first place, to draw up an agreement or covenant to make a mortgage, which will operate as a security to both parties that the negotiation shall not be broken off, and will give the mortgagee an equitable lien on the land. See *post*, 275.

Freeholds in fee or for term.

Mortgages of freeholds are either in fee or for a term of years.

A mortgage in fee is in general a preferable security to a mortgage for a term of years, and, since the introduction of trusts and powers of sale, the advantage is more peculiarly striking. Indeed, the only obvious advantage to the mortgagee in a term is, that on his decease the lands devolve on his personal representatives, who are also entitled to the beneficial interest on the mortgage sum. It is, however, a less expensive security, as a mortgage in fee is now always effected by lease and release, and two deeds are therefore necessary.

In a mortgage in fee the following clauses are usually introduced:—The mortgagor conveys the lands to the mortgagee in fee; provided that, if the

---

(*e*) *Flarty* v. *Odlum*, 3 T. R. 681; *Lidderdale* v. *Montrose*, 4 T. R. 248; *Stone* v. *Lidderdale*, 2 Anst. 533, 2 Byth. by Stew. 291.

(*f*) *Collyer* v. *Fallon*, 1 Cov. Pow. Mort. 59, n. (*c*.)

(*g*) *Davis* v. *Duke of Marlborough*, 1 Swanst. 174, S. C., 2 Wils. C. C. 130.

(*h*) *Priddy* v. *Rose*, 3 Mer. 86, 2 Sim. & Stu. 32; *Cooper* v. *Reilly*, 2 Sim. 560, *ante*, p. 227.

(*i*) *Place* v. *Fagg*, 4 Man. & Ry. 277.

mortgage money and interest shall be paid on a particular day, usually six months after the conveyance, the deed shall be void; or, according to the more modern form, the mortgagee will convey the premises to the mortgagor free from all incumbrances: the mortgagee then covenants that he will pay the sum borrowed and interest, and for title—that is, that he is seised in fee and has good right to convey, and that if the sum borrowed or interest thereon be not paid, the mortgagee may enter upon the premises and quietly enjoy them, free from all incumbrances whatever; and moreover, that if the sum and interest be not paid, then that he, the mortgagee, will do any other act for assuring the lands to the mortgagee that he may devise. Then follows a proviso for quiet enjoyment by the mortgagor until default shall be made in the payment of the mortgage money and interest. These were all the clauses that were formerly introduced.

However, if the mortgaged premises chiefly consist of houses or buildings, provisions for insurance and for repairing should be inserted, to indemnify the mortgagee for their loss or preserve their value, and under them he may himself insure or repair; and the mortgagor cannot redeem without payment of the sums so advanced, together with the mortgage debt, although they were advanced after a second mortgage, of which the first mortgagee had notice. (*k*) But subsequent advances cannot be tacked by a mere parol agreement. (*l*) The mutual interest will be attended to by giving the mortgagor power to lease, which, of himself, he cannot (*m*) exercise with effect, being a tenant for years until default, and a tenant by sufferance afterwards; (*n*) but it may also be given to trustees or to the mortgagee. When a power of sale, see *post* p. 301, is given, the mortgagor may neglect his other remedies and exercise his power, (*o*) which, if the security be sufficient, will give him complete satisfaction. The power of sale he may exercise without the concurrence of the mortgagor, (*p*) although notice to him is sometimes required. If trustees are introduced, the usual clauses for their receipts being good discharges, their change, indemnity, and reimbursement, should be inserted.

Where it may be thought requisite, a receiver may be appointed, with a salary, at the expense of the mortgagor. But the mortgagee cannot be the receiver, (*q*) but he may be appointed such by the court. (*r*)

---

(*k*) *Gordon* v. *Graham*, 7 Vin. Ab. 52, pl. 237.
(*l*) *Ex parte Hooper and others*, 1 Mer. 7.
(*m*) *Keech* v. *Hall*, Doug. 21, 3 East Rep. 449.
(*n*) Coote, 328.
(*o*) *Clay* v. *Sharpe*, Sugd. Vend. 20, 18 Ves. 344.
(*p*) *Corder* v. *Morgan*, *Lewis* v. *Moxham*, 1 Mer. 179.
(*q*) *Godfrey* v. *Watson*, 3 Atk. 518; *French* v. *Baron*, 2 Atk. 120.
(*r*) *Wilkins* v. *Williams*, 3 Ves. 588.

If the lands are a *feme covert's*, or dower has attached on them, or a title is wished to be acquired by non-claim, a covenant to levy a fine will of course be necessary. If the title-deeds are not to be delivered to the mortgagee, a covenant for their production should be taken. But unless there be some weighty reason for it, the title-deeds should be placed in the hands of the mortgagee, as, although it will not now postpone the mortgagee, (*s*) yet, by seeming to favour the suppression of the mortgage, and to allow the mortgagor to enter into any fresh transaction, with power to conceal it, it will render it suspicious.

If a term of years be outstanding, it must be assigned to a trustee for the mortgagee, or merged, see *post*, p. 292, 321; and if the legal estate be vested in any other than the mortgagor, the mortgagee should have it got in, or covenanted to be got in, for his protection. And it is to be remembered that all the expenses of the transaction are paid by the mortgagor.

Clauses are also sometimes introduced, providing that the mortgagee shall accept a reduced rate of interest if it be punctually paid, see *post*, p. 305; that the money advanced shall remain on the security of the premises a certain length of time, *post*, p. 304-7; or that the mortgagor shall have power to cut timber.

For other observations on the usual clauses, see the subsequent precedents.

The same clauses will apply to a mortgage of freeholds for a term of years. However, if the mortgagee forecloses, he would only have a long term, which would be often unmarketable: it is usual, therefore, to insert in the covenant for further assurance, a covenant that the mortgagor will, on default, convey the fee to him. The fine, if levied, should be *sur concessit*.

If the mortgagor be a tenant in tail, the clauses will be the same, but he must suffer a recovery. (*t*) See *post*.

If the mortgagor be only a tenant for life, assurances should be effected on his life, and other precautions should be taken, which have been already more appropriately considered under the title ANNUITY.

Copyholds. A mortgage of copyholds is generally effected by a covenant to surrender, and a conditional surrender (*u*) entered on the rolls in pursuance thereof, to be void on payment of the mortgage-money. This surrender should be made immediately after the money is lent, for, notwithstanding the covenant, if the mortgagor surrender to another, who is admitted, the second mortgagee will have the priority. (*x*) And even after surrender, the mort-

---

(*s*) *Barnet* v. *Weston*, 12 Ves. 133, 4 Madd. Rep. 129, and see *post*.

(*t*) Gilb. Rep. 166, 2 Vern. 206.

(*u*) See such a conditional surrender, 2 Scriv. Cop. Appx. 145. And to trustees for sale, p. 146.

(*x*) 5 Bac. Abrid. 43. But see 2 Pow. Mort. by Coven. 1071.

gagee may make a second surrender, which will be good if the first surrender is not perfected by admittance; (*y*) for until admittance, the legal estate is in the mortgagor, and the lord cannot take notice of the surrenderee. The mortgagee may call for admittance whenever he pleases, if there has been a surrender. (*z*) But, as he must pay the fine and other expenses, he is rarely admitted (*a*) until after default. But unless there be a special custom (*b*) to that effect, the lord cannot force the mortgagee to be admitted.

After the condition is broken, and before admittance, (*c*) he may file his bill of foreclosure. The usual clauses may be inserted according to circumstances. As copyholds are not extendible, (*d*) or assets for specialty debts, (*e*) judgments or bonds afford no additional security. A covenant to levy a fine may be introduced as before, if the custom of the manor warrant it.

Another mode of mortgaging copyholds is for the mortgagor to surrender the copyholds to the mortgagee, and at the same time to enter into a deed of covenant for the payment of the money and for title, and sometimes a power of sale is also inserted. A bond is also sometimes given conditioned for the payment of the money, &c. By this mode nothing is left to be done but admission to render the mortgagee's title complete: the mortgagee should not pay his money until both the title-deed and the surrender are perfected.

Most of the former remarks will apply to a mortgage of leaseholds. It is now settled, notwithstanding the case of *Eaton* v. *Jaques*, Doug. 438, that the mortgagee will be liable to the payment of the rent and performance of the covenants in the original lease, if he take an assignment of the premises, even though he has not entered, (*f*) nor will he be relieved in equity. (*g*) Covenants to indemnify against them should therefore be given, or a day should be reserved which would make the interest an underlease, and, consequently, not exposed to this difficulty. If the leases be for lives with power to renew, a covenant to renew by the mortgagor should be introduced, as without such a declaration the mortgagee cannot compel him to

Leaseholds.

---

(*y*) *Burgoyne* v. *Spurling*, Cro Car. 273.

(*z*) *Fawcett* v. *Lowther*, 2 Ves. 302.

(*a*) 8 Ves. 382.

(*b*) *Tredway* v. *Fotherby*, 2 Vern. 367. It may be here observed, that a copyhold security, where the fines are small, is as advantageous as a freehold, as it is exempt from judgments and crown debts.

(*c*) *Sutton* v. *Stone*, 2 Atk. 101.

(*d*) *Heydon's case*, 3 Rep. 8, 9, Moore, 128.

(*e*) *Drury* v. *Shaw*, 1 Atk. 95; *Aldrick* v. *Cooper*, 8 Ves. jun. 388, 394; and see further, as to copyhold securities, 1 Byth. 563.

(*f*) *Williams* v. *Bosanquet*, 1 Brod. & Bing. 238.

(*g*) *Pilkington* v. *Shaller*, 2 Vern. 374, see *post*, 383, 385.

renew. The mortgagee, however, may renew, (*h*) and will be entitled to his costs. But such renewed lease may be redeemable. (*i*)

As almost every interest may be mortgaged, it would require a larger portion of the work than can be devoted to this title to give forms for every species of mortgage. The only difference in mortgages of interests other than those here given will be found to consist in the variations of the parcels (for which the head *parcels* in the INDEX may be resorted to), and the consequent alterations in the reference to them throughout the deed.

Deed of further charge.

A deed of further charge will be found in p. 289. It will serve for further advances on every species of property, the reference to the parcels being attended to. A mortgagee without notice (*k*) of any subsequent incumbrance will be allowed to tack any sums advanced after his mortgage. In a further charge, no covenants for title are to be inserted if they have been inserted in the original mortgage. The mortgagor should, however, covenant against incumbrances and for further assurance.

Transfers of mortgages.

There are two kinds of assignments or transfers of mortgages: first, where the mortgagor and mortgagee join in making the assignment; and second, where the mortgagee alone assigns the debt and securities. The former is by far the better method. A covenant to pay to the assignee is sometimes inserted, but if the mortgage itself contain the usual covenant to pay to the *assigns* of the mortgagee, this is not only useless but incorrect. (*l*) Any fresh securities which might have accompanied the mortgage may of course be admitted to protect the assignment.

The assignment by the mortgagee alone, although often, from the mortgagor's absence, not to be helped, is not a very safe security, for the mortgagor, being only liable for his agreements with the mortgagee, (*m*) if he have no notice of the assignment, may pay a part or the whole of the mortgage-money to the mortgagee, and thus oust the assignee of so much of his right; (*n*) nor will the mortgagor be bound by any agreement (*o*) between the mortgagee and assignee on the assignment, although all necessary (*p*) expenses which the mortgagee might have paid, it seems, the assignee will

---

(*h*) *Lacon* v. *Mertins*, 3 Atk. 4.

(*i*) *Lee* v. *Vernon*, 5 B. P. C. 10. And see further, as to mortgages of leaseholds, *post*, 383.

(*k*) *Cason* v. *Round*, Prec. Ch. 226; *Brace* v. *Duchess of Marlborough*, 2 Plow. 294.

(*l*) But if the mortgagor be dead, and the heir was not bound in the former covenant, he, if possible, should covenant for payment.

(*m*) *Matthews* v. *Walwyn*, 4 Ves. 118.

(*n*) *Chambers* v. *Goldwin*, 9 Ves. 234.

(*o*) *Ashenhurst* v. *James*, 3 Atk. 271.

(*p*) Coote, 319.

be allowed. But he will not be allowed interest on the interest due at the time of the assignment, which, had the mortgagor joined, would have been otherwise. (*q*) On such an assignment, then, every endeavour should be used to serve immediate notice on the mortgagor. And registration, it is to be remembered, is not notice. (*r*) Notice is, however, not necessary. (*s*) See further, title TRANSFERS, Vol. VIII.

Mortgage of equity of redemption.

If a mortgage in fee be made, all that remains in the mortgagor is the equity of redemption. This right is now established and governed by a long train of equitable decisions, and may be mortgaged over and over again; he having the best claim to whom it has been mortgaged the first. (*t*)

Where a subsequent mortgage is made, notice should be given to the mortgagee of the legal fee, that he may not advance any further sum, which, we have seen, (*u*) without such notice, he might tack. And, if possible, the mortgagee should be prevailed upon to enter into a covenant to give the option of purchasing his securities to the mortgagee of the equity of redemption; or, at least, to allow a reference to such last mortgage to be affixed on a chief title-deed, in order to affect any other purchaser with notice. There was a leaning, at one time, to make notice to a first mortgagee, (*x*) notice to all claiming through him; but this, at first a mere suggestion, seems not to have been strengthened, and is not acted on in practice.

Mortgage of reversion.

A mortgage for a term for years leaves a legal reversion in the mortgagor's possession, which he may mortgage. The mortgagee should take the same precautions as the mortgagee of an equity of redemption, for the mortgagee for years will be allowed to tack further advances to his mortgage, (*y*) and any subsequent mortgagee, by taking an assignment of the term, may gain a priority over the mortgagee of the inheritance.

It need scarcely be suggested, that neither of these two last securities is very desirable. The mortgagee of an equity of redemption has only an equitable right, and can recover nothing in a court of law except on the mortgagor's covenant to pay. (*z*)

It may not be useless to advert shortly to what will be notice to a mort-

---

(*q*) *Smith* v. *Pemberton*, 1 Cha. Ca. 67, 68.

(*r*) *Williams* v. *Sorrel*, 4 Ves. 389.

(*s*) *Jones* v. *Gibbon*, 118, 128, 9 Ves. 563.

(*t*) *Brace* v. *Duchess of Marlborough*, 2 P. Wms. 294.

(*u*) Page 236.

(*x*) *Mackreth* v. *Symmons*, 15 Ves. 329. But see Pow. Mort. by Coventry, 541.

(*y*) *Brace* v. *Duchess of Marlborough*, *above*.

(*z*) *Palk* v. *Clinton*, 12 Ves. 59.

gagee. Direct notice is that which is regularly served (*a*) on the mortgagee, or given to him verbally. Indirect notice is that which is given to his attorney, (*b*) agent, (*b*) or counsel, (*b*) in the matter (*b*) in hand; anything that should cause inquiry (*c*) into the transaction; a public act of Parliament; (*d*) search in the register, (*e*) a suit depending, (*f*) are all notice; the registration of deeds of itself, (*g*) or the docketing of judgments; (*h*) an act of bankruptcy; (*i*) a decree (*f*) to persons not parties; rumours from strangers; (*k*) a private act of Parliament, (*d*) are not notice. And it is the general opinion of the profession, that neither a commission of a bankrupt, nor the signing a deed as a witness, will (*l*) be notice; but these are disputed points. And it is to be noted, that a person, having notice, purchasing from a person not having notice, (*m*) or a person not having notice purchasing from a person having notice, will be protected by their respective ignorance. (*n*) And if no money at all be advanced in the original mortgage transaction, if the mortgagee assign to another without notice of the fraud, and for a valuable consideration, the assignment will be (*m*) supported.

See, further, the notes to the subsequent precedents, *post*.

Of mortgages of equitable interests.

Until very lately, the mortgage of equitable interests was attended with considerable difficulties, from the danger of prior incumbrances; but two cases, that have been lately reported, have tended greatly to remove them.

According to these cases, the mortgagee of a legacy, or other equitable interest, should immediately give notice to the executor, trustee, or other legal owner, in whom the property is vested; for if he be the first mortgagee, he will thus secure his priority; if the second or third, he may thus obtain a precedence over the former purchasers or incumbrancers; but, before completing the mortgage, inquiry should always be made of the legal owner, as to its being charged or incumbered; and if an answer in the negative be returned, the validity of the transaction may thus be rendered cer-

---

(*a*) *Jones* d. *Griffiths* v. *Marsh*, 4 T. R. 464.
(*b*) *Le Neve* v. *Le Neve*, 3 Atk. 646; *Mountford* v. *Scott*, 3 Mad. 34.
(*c*) 2 Ves. Jun. 440; 13 Ves. 114.
(*d*) 2 Vern. 480.
(*e*) *Bushell* v. *Bushell*, 1 Sch. and Lef. 103.
(*f*) *Worsly* v. *Earl of Scarborough*, 3 Atk. 292.
(*g*) *Bedford* v. *Backhouse*, 2 Eq. Ca. Ab. 615.
(*h*) Ibid. 682, *n*.
(*i*) Coote, 388.
(*k*) *Wildgoose* v. *Wayland*, Goulds. 147.
(*l*) Sugd. Vend. 654; Coote, 388.
(*m*) *Mertins* v. *Jolliffe*, Amb. 313.
(*n*) *Andrews* v. *Rigley*, 4 B. C. C. 125.

tain. If the interest is derived under a deed which is in the possession of the executor or trustee, notice of the mortgage should, if possible, be indorsed on it, as that will operate as a further security in fixing a second incumbrancer with notice of the first transaction.

The cases which authorize the application of these rules are so important, that we shall state the judgment in one of them at some length. They are the cases of *Dearle* v. *Brown*, (*o*) and *Loveridge* v. *Cooper*, (*p*) in which the points are the same. In the first of these, Sir Thomas Plumer, M. R. said:

Dearle *v.* Brown. Rules laid down by Sir T. Plumer.

"The right which Zachariah Brown had, under the will of his father, was simply a right to a *chose in action*. The legal interest in the residue was vested in the executrix and executors; and they were to hold this moiety of the residue so long as Zachariah Brown lived. They were to pay him the dividends during his life; but it is clear, from the terms of the will, that they were not to part with the legal interest. Dearle, when he entered into this contract, seems to have been anxious to secure the payment of the annuity in many different modes. He took the precaution to have, not only Brown's covenant, but the joint and several security of Demages and Bircham: he took, also, a warrant of attorney to confess judgment. In fact, the fund in question was the last security resorted to, and is specified as a further and collateral security. One of the terms of the contract was, that Brown and his assigns were to be permitted to receive the 93*l.* a year, until default should be made for the space of twenty-one days in payment of the annuity. Not only, therefore, was the contract not followed by possession of the fund, but there was an express stipulation to the contrary: so that the transaction with Dearle, at the time it happened, was nothing more than an equitable contract for a collateral security, to be issuing out of a *chose in action*, not followed by equitable possession, nor by anything tantamount thereto. It was not possible for Brown to transfer the legal interest—that could not but remain with the executors; but wherever it is intended to complete the transfer of a *chose in action*, there is a mode of dealing with it which a court of equity considers tantamount to possession, namely, notice to the legal depository of the fund. Where a contract respecting property in the hands of other persons, who have a legal right to the possession, is made behind the back of those in whom the legal right is thus vested, it is necessary, if the security is intended to attach to the thing itself, to lay hold of a thing in the manner in which its nature permits it to be laid hold of,—that is, by giving notice of the contract to those in whom the legal interest is. By such notice, the legal holders are converted into trustees for the new purchaser, and are charged with responsibility towards him; and the *cestui que trust* is deprived of the power of carrying the

---

(*o*) 3 Russ. 1. (*p*) 3 Russ. 31.

same security repeatedly into market, and of inducing third persons to advance money on it, under the erroneous belief that it continues to belong to him absolutely, free from any incumbrances, and that the trustees are still trustees for him, and for no one else. That precaution is always taken by diligent purchasers and incumbrancers; if it is not taken, there is neglect, and it is fit that it should be understood, that the solicitor who conducts the business of the person advancing the money is responsible for that neglect. The consequence of such neglect is, that the trustee of the fund remains ignorant of any alteration having taken place in the equitable rights affecting it; he considers himself to be a trustee for the same individual as before, and no other person is known to him as his *cestui que trust*. The original *cestui que trust*, though he has in fact parted with his interest, appears to the world to be the complete equitable owner, and remains in the management and disposition of the property as absolutely as ever; so that he has it in his power to obtain, by means of it, a false and delusive credit. He may come into the market to dispose of that which he has previously sold; and how can those who may chance to deal with him protect themselves from his fraud? Whatever diligence may be used by a *puisne* incumbrancer or purchaser—whatever inquiries he may make, in order to investigate the title, and to ascertain the exact state of the original right of the vendor, and his continuing right—the trustees, who are the persons to whom application for information would naturally be made, will truly and unhesitatingly represent, to all persons who put questions to them, that the fund remains the sole and absolute property of the proposed vendor. These inconveniences and mischiefs are the natural consequences of omitting to give notice to trustees; and they must be considered as foreseen by those who, in transactions of that kind, omit to give notice; for they are the consequences which, in the experience of mankind, usually follow such omissions. To give notice, is a matter of no difficulty: whenever persons, treating for a *chose in action*, do not give notice to the trustee or executor who is the legal owner of the fund, they do not perfect their title; they do not do all that is necessary to make the thing belong to them in preference to all other persons; and they become responsible, in some respects, for the easily foreseen consequences of their negligence. It was as easy for Dearle or his solicitor to have given notice, in 1808, of the equitable contract with Brown, as in 1812. In not doing so, he was guilty of negligence—of gross negligence, which exposed the property to all that has since happened;—which enabled Brown to practise on another innocent individual, so as to induce him to lend his money, without any suspicion of the existence of a preceding conveyance;—which, leaving the trustee in ignorance of the fact, led him into the erroneous belief, that Brown was the owner of the whole equitable right, and induced him to represent him as the owner, to the individual who, at a period long subsequent, became the purchaser of the fund. In June, 1811, Dearle's annuity fell into arrear for

more than twenty-one days. Dearle had then a right to take immediate possession of the fund; yet he allowed Brown to continue in undisturbed possession of it, and, for more than a year afterwards, he took no step towards obtaining possession of the 93*l.* a year, which was a collateral security for the payment of what was due to him. Not even then did he give notice of the existence of his incumbrance to the executors; and they continued to hand over the income to Brown, as the only person having any claim to it. The deed under which the other plaintiff, Caleb Sherring, claims, is, with little variation, similar to the deed to Dearle, and was probably drawn by the same professional gentleman; yet no notice is taken in it of the prior conveyance to Dearle, nor is anything done by Sherring to obtain immediate possession of the fund. On the contrary, in this, as in the other indenture, it is expressly stipulated, that Brown and his assigns should be permitted to receive the 93*l.* a year, till default was made for twenty-one days in payment of the annuity. Sherring's annuity of 27*l.* was paid up to June, 1811, and then fell into arrear, but no step was taken to reach the fund. It was not till the 17th of October, 1812, that notice of these two annuities was for the first time given to the executors. The act of then giving notice shows that the annuitants were aware that notice was necessary, in order to complete their security; but this tardiness in giving notice constitutes the negligence which has produced all the mischief. For Brown, having, by the conduct of Dearle and Sherring, been thus left at liberty to deal with the property as he pleased, availed himself of this power, and was even so confident as to advertise his life interest for sale, publicly inviting purchasers to treat with him as for an unincumbered fund. In March, 1812, more than half a year before Dearle and Sherring gave the executors notice of their annuities, the contract was made between Brown and the defendant, Hall; and in the same month, an indenture of assignment was executed, reciting Brown's right, under his father's will, to the 93*l.* a year, by which, in consideration of 700*l.* and upwards, Brown transferred that 93*l.* a year to Hall. In concluding this contract, Hall conducted himself in a way very different from that in which the plaintiffs had acted; for, before he paid his money, he took the precaution of making, by his solicitor, all due inquiries of the trustees and executors." * * * *

"The prosecution was instituted on the 17th of June, 1819, six years and a half after the date of the notice, when ten years had elapsed from the date of Sherring's assignment, and eleven from the date of the assignment to Dearle, and long after a former bill had been dismissed, for want of prosecution: and what the plaintiffs seek by this new suit, is—that a court of equity shall, at this remote period, interpose, to stop the 93*l.* a year from being paid to Hall, to throw upon him the loss which must be sustained by some one or other, and to direct the fund to be applied in satisfaction of the arrears and growing payments of their annuities. The ground of claim is priority of time. They rely upon the known maxim—"*qui prior*

*est in tempore, potior est in jure.*" If by the first contract all the thing is given, there remains nothing to be the subject of the second contract, and priority must decide. But it cannot be contended that priority in time must decide, where the legal interest is outstanding; for the maxim, as an equitable rule, admits of exception, and gives way, when the question does not lie between bare and equal equities. If there appears to be, in respect of any circumstance independent of priority of time, a better title in the *puisne* purchaser to call for the legal interest, than in the purchaser who precedes him in date, the case ceases to be a balance of equal equities, and the preference which priority of date might otherwise have given is done away with and counteracted. The question here is,—not what assignment is first in date, but whether there is not, on the part of Hall, a better title to call for the estate, than Dearle or Sherring can set up? Or, rather, the question is—shall these plaintiffs have equitable relief, to the injury of Hall? What title have they shown to call on a court of justice to interpose on their behalf, in order to obviate the consequences of their own misconduct? All that has happened is owing to their negligence (a negligence not accounted for), in forbearing to do what they ought to have done, what would have been attended with no difficulty, and what would have effectually prevented all the mischief that has followed. Is a plaintiff to be heard in a court of equity, who asks for its interposition in his behoof, to indemnify him against the effects of his own negligence, at the expense of another, who has used all due diligence, and who, if he is to suffer loss, will suffer it by reason of the very person who prays relief against him? The question here is not, as in *Evans* v. *Bicknell*, whether a court of equity is to deprive the plaintiffs of any right—whether it is to take from them a legal estate, or to impose any charge upon them. It is simply whether they are entitled to relief against their own negligence. They did not perfect their securities; a third party has innocently advanced his money, and has perfected his security, as far as the nature of the subject permitted him: is this court to interfere, to postpone him to them? They say that they were not bound to give notice to the trustees; for that notice does not form part of the necessary conveyance of an equitable interest. I admit, that if you mean to rely on a contract with the individual, you do not need to give notice: from the moment of the contract, he with whom you are dealing is personally bound. But if you mean to go further, and to make your right attach upon the thing which is the subject of the contract, it is necessary to give notice; and unless notice is given, you do not do that which is essential in all cases of transfer of personal property. The law of England has always been, that personal property passes by delivery of possession; and it is possession that determines the apparent ownership. If, therefore, an individual, who in the way of purchase or mortgage contracts with another for the transfer of his interest, does not divest the vendor or purchaser of possession, but permits

him to remain the ostensible owner, as before, he must take the consequences which may ensue from such a mode of dealing. That doctrine was explained in *Ryall* v. *Rowles*, (*q*) before Lord Hardwick and three of the judges. If you, having the right of possession, do not exercise that right, but leave another in actual possession, you enable that person to gain a false and delusive credit, and put it in his power to obtain money from innocent parties, on the hypothesis of his being the owner of that which in fact belongs to you. The principle has been long recognised, even in courts of law. In *Tuyne's* case, (*r*) one of the badges of fraud was, that the possession had remained in the vendor. Possession must follow right; and if you who have a right do not take possession, you do not follow up the title, and are responsible for the consequences. 'When a man,' says Lord Bacon, (*s*) 'is author and mover to another to commit an unlawful act, then he shall not excuse himself by circumstances not pursued.' It is true, that a *chose in action* does not admit of tangible actual possession, and that neither Zachariah Brown, nor any person claiming under him, were entitled to possess themselves of the fund which yielded the 93*l.* a year. In *Ryall* v. *Rowles*, the judges held, that, in the case of a *chose in action*, you must do every thing towards having possession which the subject admits: you must do that which is tantamount to obtaining possession, by placing every person, who has a legal or equitable interest in the matter, under an obligation to treat it as your property. For this purpose, you must give notice to the legal holder of the fund; in the case of a debt, for instance, notice to the debtor is, for many purposes, tantamount to possession. If you admit to give that notice, you are guilty of the same degree and species of neglect as he who leaves a personal chattel, to which he has acquired a title, in the actual possession, and under the absolute control, of another person. Is there the least doubt, that, if Zachariah Brown had been a trader, all that was done by Dearle and Sherring would not have been in the least effectual against his assignees; but that, according to the doctrine of *Ryall* v. *Rowles*, his assignees would have taken the fund, because there was no notice to those in whom the legal interest was vested? In that case, it was the opinion of all the judges, that he who contracts for a *chose in action*, and does not follow up his title by notice, gives personal credit to the individual with whom he deals. Notice, then, is necessary to perfect the title—to give a complete right *in rem*, and not merely a right as against him who conveys his interest. If you are willing to trust the personal credit of the man, and are satisfied that he will make no improper use of the possession in

---

(*q*) 1 Ves. Sen. 348; 1 Atk. 185. (*s*) Maxims of the Law, max. 18.
(*r*) 3 Rep. 80.

which you allow him to remain, notice is not necessary; for against him the title is perfect without notice. But if he, availing himself of the possession as a means of obtaining credit, induces third persons to purchase from him as the actual owner, and they part with their money before your prior conveyance is notified to them, you must be postponed. In being postponed, your security is not invalidated: you had priority, but that priority has not been followed up; and you have permitted another to acquire a better title to the legal possession. What was done by Dearle and Sherring did not exhaust the thing (to borrow the principle of the civil law), but left it still open to traffic. These are the principles on which I think it to be very old law, that possession, or what is tantamount to possession, is the criterion of perfect title to personal chattels, and that he who does not obtain possession must take his chance. I do not go through the cases which constitute exceptions to the rule, that priority in time shall prevail. A man may lose that priority by actual fraud or constructive fraud: by being silent, for instance, when he ought to speak; by standing by and keeping his own security concealed. By such conduct, even the advantage of possessing the legal estate may be lost. The principle which I have stated, is recognised by many authorities. In *Evans* v. *Bicknell*, (*t*) Lord Eldon says, 'If in this case I could be perfectly satisfied that the intention was according to the allegations in this bill, taken altogether, that he might represent himself as entitled to credit as owner of the premises, and obtain credit in his trade by representing himself as owner of the premises, and that Bicknell acceded to that purpose, so understood, I should be strongly disposed to hold Bicknell liable to the extent in which Stansell's holding himself out as owner had involved a third party.' The case of *Bright* v. *Lord Dorchester*, (*u*) though a qualified and conditional determination, and made without prejudice to a final decision, yet, considering the known habits and caution of the great judge by whom the interlocutory order was pronounced, and the weight due even to the first impressions of his lordship, is entitled to considerable authority. The preference given in that case to the *puisne* incumbrancer, who had made inquiry of the trustees, over the prior incumbrancer, who had not, must have proceeded on the principle which I have applied to the present case. The *puisne* incumbrancer was not put into permanent possession, in that case, by a power of attorney, to receive the dividends, more than by actual payment of the current interest in the present case, and a promise of regular payment in future. In *Ryall* v. *Rowles*, (*x*) Lord Hardwicke puts his opinion principally on the ground, that when a

(*t*) 6 Ves. 192.
(*u*) 3 Russ. 49, *n*.
(*x*) 1 Ves. Sen. 371; 1 Atk. 182.

vendor is left in possession of what he has disposed of, he 'gains a delusive credit by a false appearance of substance.' 'I will not say,' he observed, 'but some inconveniences may arise on each part. But this I will say, that great inconvenience may arise by giving an opportunity to people to make such securities, and yet appear to the world as if they had the ownership of all those goods of which they are in possession, when perhaps they may not have one shilling of the property in them.' Mr. Justice Burnet said, 'Where the neglect tended to deceive the creditors, it has been held a badge of fraud, where left in his hands. It is difficult, except in very special cases, to assign a reason why an absolute or conditional vendee of goods should leave them with the vendor, unless to procure a collusive credit: and it is the same whether in absolute or conditional sales. If the conditional vendee, on paying his money for the goods, will not insist upon delivery to him, he confides in the vendor, not in the goods; and therefore should come in the same case with other creditors, especially as he has been the bait to draw other creditors in.' Then he argues, with respect to the assignment of a bond debt, or other *chose in action*, 'Why is not delivery as requisite on such assignment, as a delivery in the conveyance of a thing in possession? Why will not the means of reducing into possession be considered in the same light as a conveyance of the thing itself at law? The debt, by the assignor's continuing it in his hand, is in his order and disposition, as he may receive the money due, and cancel the bond, and assign over to another creditor, and cannot have this bond, except by the consent of the true owner in equity; and, therefore, as he is not obliged to accept a defective security, it is his own fault. As to bulky goods, the means of reducing into possession has been held sufficient: why not, then, in the case of a *chose in action?*' Lord Chief-Baron Parker expresses himself thus: 'It is said there can be only an equitable assessment of a *chose in action*—which is true; and yet, in case of bonds assigned (for bills of exchange or promissory notes are assignable at law), they must be delivered; and such delivery of the bond, on notice of assignment, will be equivalent to the delivery of the goods; for the debtor cannot afterwards justify payment to the assignor. (*y*) This clause extends to things in action; and all has not been done to divest the right from the bankrupt, and to rest a right in the mortgagee; for no notice appears to be given.' So Lord Chief Justice Lee spoke 'of an honest creditor or mortgagee,' who has had a conveyance made to him for a valuable consideration, but 'is not to have any preference to another creditor, because he does not give notice to other creditors, by having that delivery to him to which he is entitled.' I cite these authorities to show, that, in assignments of *choses in action*, notice to the legal holder has always been deemed ne-

(*y*) Domat. lib. I.

cessary; and it would be very dangerous for the solicitor of the purchaser to neglect it. A solicitor who should neglect it, would find it difficult to make out, that he had not become responsible to his client. It was said that Hall had himself been negligent; for he had not searched the Inrolment Office, where he would have found memorials that would have given him notice of these incumbrances. I answer, that Hall, in contracting for the purchase of Brown's life-interest, was not in any respect called upon, by the nature of the transaction, to search for memorials of annuities. If the fund could not have been transferred or incumbered without a memorial, he would have been bound to search in the Inrolment Office; but there was nothing to lead him to search in that quarter; and the transfer of an interest in the 93*l.* did not, taken by itself, call for a memorial. How, then, could he be expected to look for documents which had no natural connexion with the transference of the fund? It was the mere accident that the prior charges had been created by way of security for the payment of annuities, which caused memorials to be made; and memorials would have been equally necessary, if the annuities had not been secured on the fund in question. It would be too much to impose on a purchaser the obligation of making a search, to which there is nothing to lead him. In affairs of great importance, a careful individual would perhaps search every where. But it is impossible to say, that Mr. Hall was bound to conjecture that Brown had raised money by granting an annuity, and had secured that annuity by pledging his life-interest under his father's will. On these grounds, I think that the plaintiffs have not shown a title to call on a court of equity to interpose in their behalf, and to take the fund from an individual who has used due diligence, in order to give it to those whose negligence has occasioned all the mischief. There is no equality of equities between the defendant Hall and the plaintiffs. What opportunities of fraud would be afforded, if a party, who, having obtained an equitable conveyance, conceals it from every body, and lies by for years, while intermediate transactions are taking place, could at any time come forward with his secret deed, and say to a subsequent purchaser, who had advanced his money in ignorance of such a claim, 'My deed is in date prior to yours; and therefore, whatever may have been my negligence or your diligence, the property belongs to me.' Good sense, reason, authority, and equity, are all on the other side. The bill, therefore, must be dismissed, but, as against Hall, without costs. I do not make the plaintiffs pay costs to Hall, because they have been losers without any intention to commit a fraud; and I am unwilling to add to their loss. Constructive fraud is the utmost that can be imputed to them. I may mention, further, that the language of text writers (though, of course, I do not refer to them as authorities) shows that this rule, as I have stated it, is in accordance with what has been the current practice and the understanding of the profession on the subject of priorities. 'On the mortgage of a *chose in*

*action*,' says one of the text-writers, (*z*) 'it should never be omitted to give notice of the transfer to the trustee; for, upon the authority of the cases quoted in the text, (*a*) it has been thought (and indeed, it should seem, with a great degree of reason) that if a mortgagee of this equitable right neglect to give notice of his incumbrance to the trustee, and such equitable right be afterwards assigned to a second mortgagee, who takes the precaution to give the trustee proper notice, the first mortgagee will be postponed.'"

The Lord Chancellor (Lyndhurst) concurred in these principles. They may, therefore, be considered the settled law of the court, and must be acted on accordingly.

Equitable mortgages.

1. By deposit of title-deeds.

Equitable mortgages are of two kinds: 1. equitable mortgages by delivery of the title-deeds; and, 2. equitable mortgages by agreement. The mere delivery of title-deeds, by the owner of lands, to another person, as a security for money, will constitute an equitable mortgage, and a court of equity will compel the execution of a complete mortgage, although there be no written memorandum of it, (*b*) as well against the crown as a subject. (*c*) But if it does not appear to have been the intention of the parties, on the delivery of the deeds, that an equitable mortgage should be effected, or the circumstances of the case rebut the presumption, the deposit of the deeds will not constitute a mortgage. (*d*)

And though the deposit of title-deeds will constitute an equitable mortgage, although there be no written memorandum of the intention of the parties, a mere agreement to deliver them, not followed by an actual delivery, will not create a lien upon the lands. (*e*)

A tenant for life, or other person, having only a partial interest in lands, can only charge the property to the extent of his interest. If, therefore, he deposit title-deeds with another, as a security for money, his estate only will be bound. (*f*)

Although a deposit of deeds, without a word passing, will create an

---

(*z*) Powell's Law of Mortgages by Cov. 451, n. (*t*).

(*a*) *Tourville* v. *Nash*, 3 P.W. 308; and *Stanhope* v. *Verney*; but see Co. Lit. 290, b. n. (1), s. 15.

(*b*) *Russel* v. *Russel*, 1 B.C.C. 269; *Fitzjames* v. *Fitzjames*, Finch. 10; *Tratherston* v. *Kenrick*, 1 B.C.C. 270, n.; *ex-parte* Coming, 9 Ves. 115; *ex-parte* Haigh, 11 Ves. 403; *Monkhouse* v. *Corporation of Bedford*, 17 Ves. 380; *ex-parte Whitbread*, 1 Rose, 300; 19 Ves. 212, S.C.

(*c*) *Casberd* v. *Ward*, 6 Pri. 411, S.C.; Dan. 238; *Broughton* v. *Davis*, 1 Pri. 223.

(*d*) See *Lucas* v. *Dorrison*, 1 B. Moo. 29; Turn. 274.

(*e*) *Ex-parte Combe*, 4 Madd. 249.

(*f*) *Williams* v. *Medlicott*, 6 Pri. 495; *Bates* v. *Dandy*, 2 Atk. 207.

effectual equitable mortgage, yet a written memorandum should always be taken, as it entitles the mortgagee to costs on his petition for sale. (*g*) Such memorandum, however, is not admissible in evidence without a stamp; (*h*) and the same stamp is required as on a legal mortgage. 55 Geo. III. c. 184, Sched. I. Part I.; see *post*, p. 253. (*i*)

There can be no second equitable mortgage. If the owner of the deeds once parts with them to A., as a security for money, and B. afterwards lends him money, on the understanding that A. is to be a trustee of the deeds for B., to the extent of the money lent, this understanding will not be an effectual mortgage. (*k*)

An equitable mortgage, taken at a subsequent period, as a further security to an annuity, need not be registered, as it is a mere engagement, and not a grant. (*l*)

When the lease of a house has been deposited by way of equitable mortgage, the person with whom it has been deposited may be compelled to take an actual assignment of the lease, and thus become liable for the rent and covenants reserved and contained therein. (*m*)

A banker will acquire no lien on deeds left casually in his counting-house, after he has refused to advance money on them; (*n*) and if the borrower afterwards becomes bankrupt, his assignees may entertain an action of trover for the recovery of the deeds. (*o*) Neither will the delivery of deeds to the wife of another person be a sufficient delivery to create an equitable mortgage. (*p*) Nor, if deeds are deposited with an attorney, in order that he may prepare a mortgage from them, will that deposit create an equitable mortgage. (*q*)

It is doubtful whether it be necessary that all the title-deeds should be

---

(*g*) See *Norris* v. *Wilkinson*, 12 Ves. 197.

(*h*) Anon. 2 Christ. B. L. 119.

(*i*) Pow. Mort. by Cov. 1052, *c*.

(*k*) *Ex parte Whitbread*, 19 Ves. 215, S. C. 1 Rose, 301.

(*l*) *Ex parte Price*, 1 Buck. B.C. 221.

(*m*) *Lucas* v. *Commerford*, 3 B. C. C. 166, S. C. 1 Ves. Jun. 235; *Plumer* v. *Mathers*, 1 B. C. C. 53; *Staines* v. *Morris*, 1 Ves. & B. 8.

(*n*) *Lucas* v. *Dorrien*, 7 Taunt. 278, S. C.; 1 B. Mor. 29.

(*o*) Ib.

(*p*) *Ex parte Coming*, 9 Ves. 115.

(*q*) *Brander* v. *Boles*, Gilb. Eq. Ca. 35, S. C.; Pres. Cha. 375; *Brizick* v. *Manners*, 9 Mod. 284; *ex parte Balteel*, 2 Cox, 243; *Wilkinson* v. *Norris*, 12 Ves. 192; *ex parte Hooper*, 1 Mer. 9; *Muir* v. *Fleming*, 1 Dow. & Ry. N.P.C. 29; 6 Pri. 468: but see *ex parte Bruce*, 1 Rose, 374; *Edg* v. *Withington*, 1056; 2 Pow. Mort. by Cov. 1056.

delivered to the pawnee; but it seems now to be more generally thought that they must. (*r*)

If copies of court-rolls are deposited on a loan, it will be an equitable mortgage affecting the copyholds to which they relate. (*s*)

If, after deeds are deposited, and a particular sum then lent, sums are subsequently advanced on the same security, if the circumstances of the transaction can be clearly proved, a fresh equitable mortgage will be created; but a mere understanding between the parties will not be sufficient; (*t*) there must be a distinct agreement, although a parol one will be sufficient. (*u*)

If on the deposit of deeds a memorandum has been made, and it appear by it that the deposit was intended to secure previous advances, it will operate as a valid security for them. (*x*) But in general, unless it be so expressed, previous advances will not be secured. (*y*)

The most usual case of making subsequent advances, is when deeds are deposited at a banker's. And it has lately been decided, that when title-deeds are there deposited, the deposit may, by a mere verbal agreement, be extended to advances made after exchange of partners. (*z*)

A prior equitable mortgage will be preferred to a subsequent legal mortgage, if the latter have notice of the former deposit; (*a*) but not if he had no notice. (*b*) If an equitable mortgagor of a lease part with a lease for the purpose of having it renewed, he will not be deprived of priority. (*c*)

The interest of an equitable mortgagee may be transferred, by handing over the deeds to another creditor of the owner, with the understanding that the deeds are to be a security for the money advanced by the second creditor. (*d*)

---

(*r*) *Ex parte Wetherell*, 11 Ves. 398; *ex parte Pearse*, 1 Buck. B. C. 525.

(*s*) *Ex parte Warner*, 1 Rose, 287, S. C. 19 Ves. 202.

(*t*) *Ex parte Kensington*, 2 Ves. 1 B. 79; *ex parte Norman*, 2 Christ. B. L. 121.

(*u*) *Ex parte Langston*, 17 Ves. 227, S. C.; 1 Rose, 26.

(*x*) *Ex parte Alexander*, 1 Gl. & Jam. 409.

(*y*) See 1 Turn. 279.

(*z*) *Ex parte Lloyd*, 1 Gl. & Jam. 389; and see *ex parte Alexander*, ib. 149. For precedents of bonds intended to cover separate advances, see 3 Byth. 232, 235, Stew. edit.

(*a*) *Birch* v. *Ellames*, 2 Anst. 427.

(*b*) *Plumb* v. *Fluitt*, *Hiern* v. *Mill*, 13 Ves. 114.

(*c*) *Ex parte Meux*, 1 Gl. & Jam. 116.

(*d*) *Ex parte Smith*, 1 V. & B. 518; *ex parte Alderson*, 1 Madd. 53.

2. By agreement.

An equitable mortgage may also be created by an express written contract to make a mortgage. (*e*)

Remedies of equitable mortgagee.

An equitable mortgagee, if he has no estate, cannot obtain possession of the lands; but he can file his bill for a sale of the property mortgaged; or if there has been an agreement for a mortgage, he may compel the performance of that agreement.

When the mortgagor has become bankrupt, he applies by petition for a sale of the premises in the first instance, and that he may be permitted to come in under the commission for the deficiency. (*f*)

When equitable mortgagees, by deposit of title-deeds, being appointed assignees under the commission of bankrupt issued against the mortgagor, petitioned for a sale of the premises, their counsel stated, that as the two characters of assignees and mortgagees were united, the application was necessarily *ex parte*, as there was no party left upon whom the petition could be served; that, to avoid all imputation, it was desirable, therefore, that the sale should take place under the immediate direction of the court. The Vice-Chancellor made the usual order for a sale, account of principal and interest, &c., and directed that the commissioners should name a solicitor, who was to attend the taking of the account, as if he were sole assignee; and his costs were to come out of the estate. (*g*)

It has lately been decided, in the case of *ex parte Bignold*, (*h*) that an equitable mortgagee is entitled to the produce of the mortgaged estate, from the time of presenting his petition for a sale.

On a petition by an equitable mortgagee, the usual order was made for making a reference to the commissioners, and a sale. The commissioners certified that the petitioner was equitable mortgagee for 35,000*l*. The petition stated that this sum exceeded the estimated value of the estate by many thousand pounds; that the mortgaged premises had ever since the bankruptcy been in the occupation of the assignees; and that very valuable crops were growing thereon, which the assignees had begun to cut; and prayed that the petitioner might be declared entitled to a lien on the crops growing upon the premises since the bankruptcy. The Vice-Chancellor, after declaring that the petitioner was entitled to the produce of the lands from the time of presenting his petition for a sale, subject, nevertheless, to his paying or allowing to the assignees the expenses incurred by them in cultivating the lands from that period, ordered that the assignees should

---

(*e*) *Hankey* v. *Vernon*, 2 Cox, 12; *Becket* v. *Cordley*, 1 B. C. C. 352; *Legard* v. *Hodges*, 1 Ves. 477.

(*f*) *Ex parte Jennings*, 1 Madd. 331, S. C. 2 Swanst. 360.

(*g*) *Ex parte Cowdry and Pitt*, 2 Gl. & Jam. 272.

(*h*) 2 Gl. & Jam. 273.

account accordingly, &c., and that the petitioner and assignees should be paid their costs of, and occasioned by, this application, out of such proceeds.

This case, however, is contrary to an opinion expressed by Lord Eldon, in *ex parte Alexander*. (*i*)

## VI.—Of Collateral Securities.

A BOND is very frequently taken as a collateral security to a mortgage. It was formerly conditioned for the performance of covenants; but is now simply conditioned for the payment of the mortgage-money. Should the security of the property mortgaged be insufficient, the mortgagee may, by means of the bond, recover the deficiency from the mortgagor: (*k*) but as a covenant by the mortgagor to pay the money is always inserted in the mortgage-deed, the bond is in fact unnecessary, as the mortgagor will have the same remedy under the covenant as the bond would have given him. Before the late act, 1 Wil. IV. c. 47, there was an advantage in taking a bond instead of relying on the covenant, inasmuch as the act against fraudulent devises (*l*) did not apply to actions of covenant for uncertain damages. (*m*) But by the late act all the remedies before given to bond creditors are expressly extended to creditors under covenants, as well for uncertain as certain damages. There is, therefore, no necessity whatsoever, since this act, of taking a bond as a collateral security; and it will merely increase the expense, without giving any additional security to the parties.

Bond.

1 Wil. 4, c. 47.

Warrants of attorney are also sometimes given as a collateral security; and when the mortgagor has privilege of person, they should usually be taken. If judgment is entered up upon them, and docketed, they will enable the mortgagee at once to obtain the money out of the personal estate of the mortgagor, and will constitute a general lien upon all his real estate. It was formerly considered that a warrant of attorney was peculiarly desirable where the mortgagee was a trader: but it has been lately decided, under the 6 Geo. IV. c. 16, s. 108, that unless the debt is satisfied by the levying of the execution and sale before the bankruptcy, the judgment is void against creditors. (*n*)

Warrant of attorney.

---

(*i*) 1 Gl. & Jam. 409; 2 Gl. & Jam. 275.

(*k*) *Took* v. *Hartley*, 2 Dick. 785; 2 Bro. C. C. 125; *Perry* v. *Barker*, 8 Ves. 527.

(*l*) 3 & 4 Wil. & Mary, c. 14, made perpetual by 6 & 7 Wil. III. c. 14.

(*m*) See *Wilson* v. *Knubley*, 7 East, 128.

(*n*) See *Wymer* v. *Kemble*, 6 B. & C. 479; *Taylor* v. *Taylor*, 5 B. & C. 392.

This section was as follows:—"And be it enacted, that no creditor, having security for his debt, or having made any attachment in London or any other place, by virtue of any custom there used, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of a lien upon, any part of the property of such bankrupt, before the bankruptcy; *provided, that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or nil dicit, shall avail himself of such execution, to the prejudice of other fair creditors, but shall be paid rateably with such creditors.*"

Under this section, it has been held, that an execution obtained by *nil dicit*, prior to a bankruptcy, may be set aside by the assignees by petition, but not by bill in equity. (*o*)

After seizure of goods by the sheriff, under an execution upon a judgment by *nil dicit*, but before sale, the debtor committed an act of bankruptcy, and a commission issued, of which the sheriff had notice, but nevertheless sold and paid the proceeds to the execution creditor: the court held the sheriff liable; as both the creditors obtained judgment by *nil dicit*, it could not have been an adverse suit; and the judgment was within the very words of the proviso in section 108 of the new bankrupt act, 6 Geo. IV. c. 16. The proviso was introduced into this act for the first time as an addition to the 103d section of the former statute, 5 Geo. IV. c. 98. The intention certainly was to prevent voluntary preferences; the words probably may go beyond the intention; but if they do, it rests with the legislature to make an alteration; the duty of the court is only to construe and give effect to the provision. The intention that the creditor should not have the full benefit of his execution, but only be paid *pari passu* with the other creditors, is sufficiently manifest; the difficulty is, as to the mode of giving effect to the intention, no mode being mentioned in the act. And, upon consideration, it appeared to the court that the only effectual mode is, to prevent the creditor from receiving the money produced by a sale of the goods taken in execution. If he is allowed to receive and retain the money, he will most frequently receive more than a rateable proportion. If he is to be allowed to receive and not retain the money, there must be some mode by which the assignees may recover it from him; because, until the money is in their hands, the rateable proportion to be received by the creditor cannot be ascertained. If the creditor is liable and able to refund the money, the receipt of it in the first instance will be of no use to him; if unable to refund, he will obtain the advantage which this proviso is intended to prevent. The safe course, therefore, is, to say that he ought

---

(*o*) *Mitchell* v. *Knott*, 2 Gl. & Jam. 26.

not to receive the money; and if he ought not, but does, then he will have received money belonging, not to himself, but to the assignees of the bankrupt, and will consequently be liable to an action at their suit, for money had and received to their use. Then the duty of the sheriff, having notice of the bankruptcy, is, to pay the money to the assignees, to whom it legally belongs, and not to the creditor, to whom it does not legally belong. And this being his duty, if he does pay the money to the creditor, he places himself in the ordinary situation of a man, who, having in his hands the money of A., thinks fit to hand it over to B. The wrongful payment will be no discharge; but he will still be liable to an action for money had and received at the suit of the assignees, to whom the money belongs. The seizure, being prior to the act of bankruptcy, is lawful and right; and it is not necessary to say whether the sale be lawful or tortious. The sale may be a lawful act, and yet the proceeds may belong to the assignees; or, if it be wrongful, they may waive the wrong, and sue for the proceeds as money raised to their use. The sheriff may certainly, in some cases, be placed in a situation of difficulty, because the commission may turn out to be valid; but this difficulty is of the same kind as that in which he is placed in the case of an alleged act of bankruptcy before the seizure, and a commission afterwards; and he has the same modes of relief. (*p*)

The construction given to this section having been found to be of much practical inconvenience, an act was introduced in the last session of Parliament for the purpose, among other things, of remedying it.

By the 1 Wil. IV. sess. 2, c. 7, s. 6, after reciting, that, by an act passed in the 6th year of the reign of his late majesty, King George IV., intituled "An Act to Amend the Laws relating to Bankrupts," it is provided, that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors: and that, by reason of such provision, plaintiffs have been and might be deterred from accepting a *cognovit actionem*, with stay of execution, whereby the expense of further proceedings in such action might have been and may be saved or diminished; for remedy thereof, it is enacted, that no judgment signed, or execution issued, after the passing of this act, on a cognovit action, signed after declaration filed or delivered, or judgment by default, confession, or *nihil dicit*, according to the practice of the court, in any action commenced adversely, and not by collusion, for the purpose of fraudulent preference, shall be deemed or taken within the said provision of the said recited act." 1 Wil. 4, sess. 2, c. 7.

---

(*p*) See *Notley* v. *Buck*, 8 B. & C. 160.

### VII.—Of Stamping a Mortgage.

The clauses of the schedule to the stamp act, 55 Geo. III. c. 184, relating to mortgages, are as follows:—

"Mortgage, conditional surrender by way of mortgage, further charge, wadset and heritable bond, disposition, assignation, or tack in security; and eik to a reversion; of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever;

"Also, any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland, under a clause of reversion, but without any personal bond or obligation therein contained for the payment of the money or stock intended to be secured;

"Also, any conveyance of any lands, estate, or property whatsoever, in trust, to be sold, or otherwise converted into money, which shall be intended only as a security, and shall be redeemable before the sale or other disposal thereof, either by express stipulation or otherwise; except where such conveyance shall be made for the benefit of creditors generally, or for the benefit of creditors specified, who shall accept the provision made for payment of their debts, in full satisfaction thereof, or who shall exceed five in number;

"Also, any defeazance, letter of reversion, back bond, declaration, or other deed or writing, for defeating or making redeemable, or explaining or qualifying any conveyance, disposition, assignation, or tack, of any lands, estate, or property whatsoever, which shall be apparently absolute, but intended only as a security;

"Also, any agreement, contract, or bond, accompanied with a deposit of title-deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate, or property, comprised in such title-deeds, or for pledging or charging the same as a security;

"And, also, any deed whereby a real burden shall be declared or created on lands or heritable subjects in Scotland.

"Where the same respectively shall be made as a security for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable,

| | | | |
|---|---|---|---|
| | Not exceeding | £50 — | £1 0 0 |
| Exceeding | £50 and not exceeding | 100 — | 1 10 0 |
| ——— | 100 ——— | 200 — | 2 0 0 |
| ——— | 200 ——— | 300 — | 3 0 0 |
| ——— | 300 ——— | 500 — | 4 0 0 |
| ——— | 500 ——— | 1000 — | 5 0 0 |
| ——— | 1000 ——— | 2000 — | 6 0 0 |
| ——— | 2000 ——— | 3000 — | 7 0 0 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Exceeding | 3000 | and not exceeding | 4000 | — | 8 | 0 | 0 |
| ——— | 4000 | ——— | 5000 | — | 9 | 0 | 0 |
| ——— | 5000 | ——— | 10,000 | — | 12 | 0 | 0 |
| ——— | 10,000 | ——— | 15,000 | — | 15 | 0 | 0 |
| ——— | 15,000 | ——— | 20,000 | — | 20 | 0 | 0 |
| ——— | 20,000 | | | | 25 | 0 | 0 |

"And where the same respectively shall be made as a security for the repayment of money thereafter to be lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; other than except any sum or sums of money to be advanced for the insurance of any property comprised in such mortgage or security against damage by fire, or to be advanced for the insurance of any life or lives, pursuant to any agreement in any deed, whereby any annuity shall be granted or secured for such life or lives,—

"If the total amount of the money secured, or to be ultimately recoverable thereupon, shall be uncertain and without any limit, 25*l.*"

"But if the total amount of the money secured, or to be ultimately recoverable thereupon, shall be limited not to exceed a given sum, the same duty as on a mortgage or wadset, for such limited sum.

"And where the same respectively shall be made as a security for the transfer or re-transfer of any share in any of the government or parliamentary stocks and funds of the Governor and Company of the Bank of England, or of the East-India Company, or of the South-Sea Company, in consideration of stock or money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, the same duty as on a mortgage or wadset for a sum of money equal to the value of the stock or fund secured, according to the average price thereof, on the day of the date of the mortgage, or other instrument, aforesaid, or on either of the ten days preceding.

"And where the same respectively shall be made as a security for the payment of a sum of money, and also for the transfer or re-transfer of a share in any of the said stocks or funds, the said *ad valorem* duty shall be charged in respect of each.

"And in case the same respectively shall be made as a security for the payment or transfer, to different persons, of separate and distinct sums of money, or shares in any of the said stocks or funds, the said *ad valorem* duty shall be charged for and in respect of each separate and distinct sum of money or share in any of the said stocks or funds therein specified and secured, and not upon the aggregate amount thereof.

"And where any such mortgage or wadset, or other instrument hereby charged with the same duty as a mortgage or wadset, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2160 words or upwards, then for every entire quan-

tity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of 1*l.*

"Any transfer or assignment, disposition, or assignation, of any mortgage or wadset, or of any such other security as aforesaid, or of the benefit thereof, and of the money or stock thereby secured, in all cases where the person entitled to the right of redemption or reversion shall not be made a party to such transfer or assignment, disposition or assignation; and also where the person who originally made the mortgage, wadset, or other security, shall continue entitled to the right of redemption or reversion, and shall be made a party to such transfer or assignment, disposition or assignation, provided no further sum of money or stock be added to the principal money or stock already secured, 1*l.* 15*s.*

"And, in all other cases, such transfer or assignment, disposition or assignation, shall be charged with the same duty or duties as an original mortgage, wadset, or other security.

"And where any such transfer or assignment, disposition or assignation, hereby charged with a duty of 1*l.* 15*s.*, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2160 words and upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further and progressive duty of 1*l.* 5*s.* Provided always, that where several distinct deeds or instruments, falling within the description of any of the instruments hereby charged with the said *ad valorem* duty on mortgages and wadsets, shall be made at the same time for securing the payment or transfer of one and the same sum of money, or one and the same share of any of the stocks or funds before mentioned, the said *ad valorem* duty, if exceeding 2*l.*, shall be charged only on one of such deeds or instruments, and all the rest shall be charged with the duty to which the same may be liable, under any more general descriptions of such deeds or instruments contained in this schedule; and, if required for the sake of evidence, all the rest of such deeds or instruments shall be also stamped with some particular stamp, for denoting or testifying the payment of the said *ad valorem* duty, on all the said deeds or instruments being produced, duly stamped with the duties hereby charged thereon.

"And where any copyhold or customary lands or hereditaments shall be mortgaged by means of a conditional surrender or grant, the said *ad valorem* duty shall be charged on the said surrender or grant, or the memorandum thereof, if made out of court, or on the copy of court roll of the said surrender or grant, if made in court. And copies of court roll made after the 31st of August, 1810, of surrenders and grants made in court before or upon that day, and subsequent to the 10th of October, 1808, shall be charged with the said *ad valorem* duties. But copies of court roll, of surrenders and grants made before or upon the 10th of October, 1808, shall not be liable thereto.

"And where any copyhold or customary lands or hereditaments shall be mortgaged or charged, together with other property, for securing one and the same sum of money, or one and the same share of any of the stocks and funds before mentioned, the said *ad valorem* duty shall be charged on the deed or instrument relating to the other property.

"And where there shall be duplicates of any deed or instrument chargeable with the said *ad valorem* duty on mortgages and wadsets, exceeding 2*l.*, one of them only shall be charged therewith, and the other or others charged with the duty to which the same may be liable, under any more general description in this schedule; and on the whole being produced, duly stamped with a particular stamp for denoting or testifying the payment of the said *ad valorem* duty.

"Exemptions from the said *ad valorem* duty on mortgages, &c., but not from any other duty to which the same may be liable:—

"Any deed or other instrument made in pursuance of and conformably to any agreement, contract, or bond, charged with, and which shall actually have paid, the said *ad valorem* duty, or the *ad valorem* duty on mortgages granted by the act of 48 Geo. III. c. 149, before mentioned.

"Any deed or other instrument made for the further assurance only of any estate of property, already mortgaged, pledged, or charged as a security, by any deed or instrument which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds imposed by 44 Geo. III. c. 98, and 48 Geo. III. c. 149, before mentioned.

"Any deed or other instrument made as an additional or further security for any sum or sums of money, or any share or shares of any of the stocks or funds before mentioned, already secured by any deed or instrument which shall have paid the said *ad valorem* duty hereby charged, or the *ad valorem* duty on mortgages or heritable bonds charged by 48 Geo. III. c. 98, or of 48 Geo. III. c. 149, to be exempt from the said *ad valorem* duty hereby charged, so far as regards such sums or sum of money, or such share or shares of any of the said stocks or funds before secured, in case such additional or further security shall be made by the same person or persons who made the original security; but if any further sum of money or stock shall be added to the principal money or stock already secured, or shall be thereby secured to any other person, the said *ad valorem* duty shall be charged in respect of such further sum of money or stock.

"And, if necessary for the sake of evidence, the deeds or instruments hereby exempted from the said *ad valorem* duty shall be stamped with a particular stamp, for denoting or testifying the payment of the *ad valorem* duty, upon all the deeds and instruments relating to the particular transaction being produced, and appearing to be duly stamped with the duties to which they were liable.

"For general exemptions from the preceding and all other stamp duties, see the end of this part of the schedule.

" Mortgage, wadset, &c., with a conveyance of the equity or right of redemption, or other matter, in the same deed, viz.:

" Where any deed or writing shall operate as a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages, and also as a conveyance of the equity or right of redemption or reversion of any lands, estate, or property therein comprised, to or in trust for, or according to the direction of a purchaser, such deed or writing shall be charged, not only with the said *ad valorem* duty on mortgages, but also with the *ad valorem* duty hereinbefore charged on a conveyance upon the sale of any property; but where the equity or right of redemption or reversion shall be thereby conveyed or limited in any other manner, such deed or writing shall be charged only as a mortgage. And in all other cases, where a mortgage or other instrument hereby charged with the *ad valorem* duty on mortgages, shall be contained on one and the same deed or writing with any other matter or thing (except what shall be incident to such mortgage or other instrument), such deed or writing shall be charged with the same duties (except the progressive duty) as such mortgage or other instrument and such other matter or thing would have been separately charged with, if contained in separate deeds or writings.

" And where any such deed or writing as is mentioned in the two preceding clauses, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall contain 2160 words or upwards, then for every entire quantity of 1080 words contained therein, over and above the first 1080 words, a further progressive duty of 1*l.* 5*s.*"

A deed executed as a further security for advances made and to be made under a former mortgage-deed, is, by the 48 Geo. III. c. 149, exempted from an *ad valorem* stamp, if the prior deed be stamped with an *ad valorem* duty sufficient to cover the future as well as the prior advances. (*q*)

By the 3 Geo. IV. c. 117, s. 3, where any deed is made as an additional or further security for any sum or sums previously secured by any bond on which the *ad valorem* duty shall have been paid, such deed shall be charged only with the ordinary duty payable on deeds in general; but this section only applies to securities between the same parties for the same sum. Therefore, an *ad valorem* stamp is necessary, if upon a transfer of a mortgage any new security be made by the mortgagor to the mortgagee, or if upon such transfer any additional sum be advanced. (*r*)

---

(*q*) *Robinson* v. *Macdonnell*, 5 Mau. & Sel. 228.

(*r*) *Marten, demandant, Baxter, tenant*, 5 Bing. 160.

## VIII.—Of the Delivery of the Title-Deeds on a Mortgage.

Mortgagee should insist on having title-deeds.

A mortgagee should always insist on having the title-deeds placed in his possession. Where the whole estate to which they relate is mortgaged, there can be no excuse for not placing the deeds in the possession of the mortgagee, and he should on no account advance his money without first having them in his possession. It is only when a part of the lands is mortgaged to him, or that the mortgagor has only a particular interest in them, that there can be any pretence for their non-delivery. When it is alleged that the mortgagor has only a partial interest in the lands, and for that reason has not the deeds, it will be proper to inquire strictly into the truth of this statement, because it may happen that the mortgagor has, in fact, been in possession of the deeds, and has parted with them to a prior incumbrancer.

Where the mortgagee obtains only a part of the lands to which the title-deeds relate, they should be placed in the possession of some third person for safe custody, who should enter into a covenant to produce them for all reasonable purposes, both to mortgagee and mortgagor. When there is only a very small part of the lands to be mortgaged, it may in some cases be safe to allow all the deeds to remain in possession of the mortgagor, on his covenanting to produce them, and on his indorsing a notice of the mortgage on the principal deed. The following case lately occurred in practice: A. having entered into a large building speculation, and having erected forty houses, finding it necessary to raise money for carrying it on, adopted the following plan. As soon as he had finished one of the houses, he mortgaged it; but, as the title-deeds related not only to the house finished, but also to the thirty-nine other houses, a notice was indorsed on the principal title-deed, stating the date of each mortgage-deed, the parties, and the exact premises included in each mortgage-deed. This course was pursued with about ten of the houses; and then A. agreed with B. to mortgage an eleventh house to him. On the examination of the abstract for that purpose, the mortgagee demanded the production of the original preceding mortgage-deeds of the other ten houses, and refused to complete his mortgage without their production. For him it was contended, that it was absolutely necessary that he should see these deeds, in order to satisfy himself that they did not include any part of the premises which were to be mortgaged to him; that the indorsements on the principal title-deed affected him with notice of the contents of the prior mortgage-deeds, and that he was bound by the whole contents. For the mortgagor it was contended, that he was not bound to produce these deeds; that it would be an extreme hardship if a mortgagor were bound under the circumstances to produce deeds which were in possession of third parties—namely, the other mortgagees, who might be out of the country, or in distant parts of it; and

that the mortgagee of the eleventh house would not have notice through the indorsement of the contents of all the prior mortgage-deeds, but would merely be bound by the contents of the indorsement, which must be taken to be true. The objection was afterwards compromised. There is, it is believed, no case on this point, which is of considerable difficulty and importance. (*s*)

It is now well established, that where there is no fraud on the part of the mortgagee, although he allow the mortgagor to retain the title-deeds, and a subsequent mortgagee obtain them, yet the first mortgage will not be postponed. This rule, however, should never influence the practitioner, because it is clear that a subsequent purchase for valuable consideration, without notice of the first mortgage, would defeat it.

*Evans* v. *Bicknell.*

Rules as to permitting a mortgagor to retain the title-deeds.

The exact circumstances when this rule will be applied are so important, that we shall give a part of the judgment of Lord Eldon in *Evans* v. *Bicknell*, 6 Ves. 174, which discusses the authorities before the decision of that case. The circumstances were as follows:—By indentures of lease and release, dated the 8th and 9th of September, 1792, William Stansell conveyed to Elizabeth Reed, also of Bristol, her heirs, executors, administrators, and assigns respectively, certain freehold and leasehold estates by way of mortgage, for the sum of 300*l.*; and it was provided, that Hawkins, an attorney, was to receive the rents and profits, and to apply them in the first instance to the interest, and then to accumulate them for the discharge of the principal. At the date of the mortgage, the only interest Stansell had in these estates was under a settlement executed in November, 1785, previous to his marriage with Elizabeth Bicknell, by which all the said leasehold and freehold estates were assigned and conveyed to John Bicknell and John Taylor, their executors and administrators, and heirs and assigns respectively, upon trust, for the separate use of Elizabeth Bicknell, for life; remainder to the use of Stansell, for life; remainder to the children, as he should appoint; and, in default of appointment, equally, with a reversionary interest to Stansell in default of children. They had issue two children. Afterwards, two or three years before the mortgage, Stansell became insolvent, and separated from his wife. Elizabeth Reid having married Evans, the bill was filed by them, stating these circumstances, and that the real title of Stansell had been discovered since the mortgage; that all the title-deeds had been, upon the marriage, delivered to Bicknell, the trustee; and charging a design to raise money upon the credit of the premises; and that Bicknell delivered the deeds out of his custody for the purpose of enabling Stansell to represent himself to the plaintiff to be the

(*s*) See *Hiern* v. *Mill*, 13 Ves. 114.

owner of the premises; that he has admitted or declared upon different occasions, and in the hearing of different persons, and that Stansell at the time of the application informed him, he wanted them for the purpose of obtaining credit; and he made such declaration or admission in the presence of the plaintiff and Hawkins, the solicitor, and the defendant, Taylor. The bill prayed, that the estates may be sold to satisfy the mortgage, and that the defendant, Bicknell, should be decreed to answer the deficiency, or the whole, if the court should be of opinion that the estate should not be sold. The defendant, Bicknell, by his answer, stated that Stansell, some years after the execution of the settlement, and prior to the execution of the mortgage, became insolvent, and assigned all his estate for the benefit of his creditors, which was a matter of notoriety at Bristol; and advertisements were inserted in the Bristol newspaper. The title-deeds were, soon after the execution and previous to the marriage, delivered by Stansell to the defendant, Bicknell, and remained in his custody till they were delivered by him to Stansell, a short time previous to his mortgage, when all the title-deeds, except the said settlement, were delivered, at the desire and with the approbation of the said Elizabeth Stansell, to the defendant, William Stansell, who promised to redeliver it in a few hours, or next morning at the furthest. Upon the defendant's application afterwards, Elizabeth Stansell admitted she had them, and refused to part with them. He denied, that the delivery was to enable him to obtain a mortgage from the plaintiff, or any one; and stated, that he never did admit or declare, in the presence of Hawkins, Taylor, or any other person, nor did Stansell, when he applied for the deeds, or at any time, inform him, that he wanted to obtain money by way of mortgage or otherwise; but he admitted Stansell did inform him he wanted the use of the title-deeds, merely to show or convince some person or persons with whom he was in the habit of taking credit in the way of trade, that he and his wife were legally in possession of the rents and profits of the freehold and leasehold estates. The defendant, John Taylor, after the answer of Bicknell was put in, was examined by the plaintiffs, and, by his depositions, he stated that, upon the 29th of January, 1794, Elizabeth Evans, and Hawkins, the attorney, came to him about the mortgage, and they and the deponent went to Bicknell; who strenuously denied that he had delivered the deeds for the purpose of a mortgage; but, at length, after much altercation and abusive language between him and Hawkins, informed them, that Stansell had desired him to lend him the title-deeds belonging to the marriage settlement, to show to some person, who would credit him with goods in his trade to the amount of 40*l.* or 50*l.*, upon seeing them; and the person to lend the money was to receive two years' rents; that he had promised to return in an hour; that he (Bicknell) had lent them; and had often sent, but never could get them; and he denied that he knew of the mortgage. Hawkins died before the cause came to an issue.

Judgment of Lord Eldon.

The Lord Chancellor said, "there is a peculiarity in this mortgage, from the circumstances that Hawkins, the attorney, was appointed to receive the rents and profits, and to apply them, in the first instance, to the interest, and then to accumulate them for the discharge of the principal, so that it is, in fact, a mortgage aiming at the delivery of possession immediately to the mortgagee, to the intent to repay the money lent by the rents and profits as soon as possible. Though that circumstance is a peculiarity, it is not a circumstance pressing at all upon the application of any principle that ought otherwise to dispose of the case. The question in this cause is, whether, upon the doctrine of this court, the defendant, Bicknell, is liable to make good the deficiency to the plaintiff, upon this transaction, beyond the value of Stansell's interest under the settlement, which would be the first to be applied. The bill contended, at first, that this was a gross fraud on the part of the wife; that she was privy to all the circumstances under which her husband obtained the lease, and gave positive encouragement to the party lending, an allegation which, if made out, would be sufficient to postpone her to the mortgagee, for coverture is no excuse for fraud. Upon her answer, however, and the evidence, it is not now, nor can it be, contended, that there was, upon her part, either distinct fraud, or that gross degree of negligence, which the court looks on as fraud, with regard to the consequences attaching to it. Therefore, her estate, so far as it depends upon her own act, appears secure to her. The bill, then, fails altogether as a bill requiring a conveyance from any of the defendants, to make good the plaintiff's title. From her there can be no conveyance, her estate being settled to her separate use, and protected by the legal estate of Taylor and Bicknell; the former, so little implicated in the fraud or negligence, that he was examined as a witness; and, therefore, it is impossible to affect his estate protecting her's; and if Bicknell was the sole trustee, it is much too strong to say, this married woman, *cestui que trust*, should be deprived of her interest through an innocent party; because there might have been fraud or negligence in Bicknell, in whom the legal estate was. Her equity, to be protected, would be as strong as the plaintiff's, to have their estates made good. The court, if it stood indifferent upon such a case, would have acted upon its usual principles. The question, then, is, supposing the husband's interest insufficient to satisfy the mortgage, whether there is a personal demand against Bicknell, upon the circumstances of his conduct; and whether, if there is, it can be enforced in a court of equity? I shall dispose of the last consideration first. If there is a jurisdiction at law in such cases, there is also a jurisdiction in equity; and then, if there is a concurrent jurisdiction, there can be no reason for dismissing the bill. Attending to the cases decided at law, there can be very little doubt that a declaration could be framed upon the circumstances of this case, so that an action might be maintained, if there be fraud in the conduct of Bicknell; but it will not follow that this court cannot give relief. *Pasley* v. *Free-*

*man*, (*t*) which is the first case of its kind, proceeded upon this ground: that the defendant was averred, by the declaration, to have falsely, deceitfully, and fraudulently asserted, that Falch was safely to be trusted. The action was maintained on the ground of fraud and deceit in the defendant, and damage to the plaintiff; circumstances which were held, by a majority of the judges, sufficient to maintain the action. It has occurred to me, that that case, upon the principles of many decisions in this court, might have been maintained here; for it is a very old head of equity, that if a representation is made to another person going to deal upon a matter of interest upon the faith of that representation, the former shall make that representation good, if he knows it to be false: and in that case, and some others, there appears to be a disposition to hold, that if there was relief to be administered in equity, there ought to be relief in law; a proposition which appears to be excessively questionable: and I doubt whether it is not founded upon pure ignorance of the constitution and doctrine of this court. I allude to it, the rather on account of a case frequently mentioned, *Goodtitle* v. *Morgan*, (*u*) in which Mr. Justice Buller expresses himself in this manner:—'It is an established rule, in a court of equity, that a second mortgagee, who has the title-deeds, without notice of any prior incumbrance, shall be preferred; because, if a mortgagee lends money upon mortgage, without taking the title deeds, he enables the mortgagor to commit a fraud. If this has become a rule of property in a court of equity, it ought to be adopted in a court of law; here the defendants took mortgages without inquiring after the title-deeds; the subsequent mortgagee is a purchaser without notice; and, as he has taken the title-deeds, he has the better title.' The first of these propositions is certainly, upon the late decisions, not true. I do not wonder that Mr. Justice Buller stated the doctrine as he did; for, in *Ryal* v. *Bowles*, (*x*) it is so stated by Mr. Justice Burnet, and without observation by the Lord Chancellor, or the other learned persons by whom his lordship was assisted, as being contrary to the law of this court; and, in *Becket* v. *Cordley*, (*y*) in which I was counsel for Mr. Ambler, who had a good memory of that time, he was certainly impressed with a full conviction that that was the doctrine of this court. With regard to the second proposition of Mr. Justice Buller, that if this had become a rule of property in equity, therefore it ought to be adopted in a court of law, with great deference to the memory and learning of that judge, that appears to me a very hasty proposition; and the converse undoubtedly will not hold, for it is impossible for this court,

---

(*t*) 3 Term Rep. B. R. 51.
(*u*) 1 Term. Rep. B. R. 755.
(*x*) 1 Ves. 348, 375; 1 Atk. 165.
(*y*) 1 Bro. C. C. 357.

upon the principles upon which it acts, to say, that whatever is a rule of proceeding at law is of course a rule of proceeding in equity. It may be asserted, that it should be the case; but it is impossible it can. For instance, in the case of the mortgagee, put in *Pasley* v. *Freeman*, if the man makes a false declaration, and an action can be maintained upon that, the principle upon which it can be maintained is, that a court of equity will relieve, the converse ought to hold—that where an action can be maintained, equity should give relief. But is it so? A defendant in this court has the protection arising from his own conscience, in a degree in which the law does not affect to give him protection. If he positively, plainly, and precisely denies the assertion, and one witness only proves it as positively, clearly, and precisely, as it is denied, and there is no circumstance attaching credit to the assertion, overbalancing the credit due to the denial, as a positive denial, a court of equity will not act upon the testimony of that witness. Not so at law. There the defendant is not heard. One witness proves the case; and, however strongly the defendant may be inclined to deny it upon oath, there must be recovery against him. * * * I conceive it is now very well settled, that the doctrine of Mr. Justice Buller, that I have just stated, is founded upon error. It would be an idle waste of time to go through all the cases which will be found in *Plumb* v. *Fuitt*, (*z*) and admirably well stated by Mr. Fonblanque. (*a*) The doctrine, at last, is, that the mere circumstance of parting with the title-deeds, unless there is fraud, concealment, or some such purpose, or some concurrence in such purpose, or that gross negligence which amounts to evidence of a fraudulent intention, is not of itself a sufficient ground to postpone the first mortgage. I agree with Chief-Justice Eyre, I should have been glad to have found the rule established in the court the other way. At the same time, allowance must be made for the cases put by Mr. Fonblanque, of joint tenants and tenants in common, cases of necessary exception: all cannot have the deeds. Therefore, if the rule could be pressed to the extent to which Mr. Justice Buller carried it, those cases must be excepted, in which, from the nature of the title, the deeds may be honestly out of the possession. With that exception, such a rule would avoid a great deal of fraud in mortgage titles; upon which this observation arises—that no man can tell where he is perfectly secure. But there is not such a rule. Then as to concealment; as the case of persons standing by as witnesses to deeds: if it is to be taken as a fact that the witness knows the contents of the instrument to which he is a witness, the engrossment of the mortgage by a person entitled under a prior entail, no recovery having been suffered: all these cases, either of positive representa-

---

(*z*) 2 Anstr. 432.

(*a*) 1 Treat. Eq. 262, n. (*u*).

tion contrary to the truth, or concealment of what ought to have been represented, are intelligible; but it is not to be denied, that where there has been mere negligence, though it may have very mischievous consequences, the court has not charged the party, unless it has been so gross as to amount to evidence of fraud. The case of the Thatched-House Tavern was very strong. The mortgagor, desiring to have the deeds, represented to the mortgagee that he was about to make additional buildings, which would improve his security. The purpose of delivering the deeds was innocent; but it gave the other the complete power of executing the fraudulent purpose. Having got the title-deeds, he makes a mortgage, and then contrived to get the lease back from the second mortgagee and restored it to the first. But the negligence did not rest upon that only. The mortgagor applied a second time to the first mortgagee, and under another pretence got the deeds again, which enabled him a second time to cheat third persons, and he made a third mortgage. The circumstance of his parting with them again was strong. Then the question arose upon these mortgages, whether the first should not be postponed to the second and third; but the court thought there must be some concurrence in a fraudulent purpose, and the purpose held out disclosed nothing of fraud. If negligence alone was insufficient, it ought to have had the effect in that case; but the court said, the first mortgagee had done nothing unconscientious, and did not conceive themselves entitled to relieve the subsequent mortgagees. If he had not got back the lease again, perhaps by consequence he would have been postponed; but not upon the ground that he had parted with it, but upon *Head* v. *Egerton*, (*b*) for it would have been impossible to have taken it from the second mortgagee, and notwithstanding any decree that may be made, the case is open to these plaintiffs, if they can make any thing of it upon that. If, then, the cases go to this only, that there must be positive fraud, or concealment, or negligence so gross as to amount to fraud, is there in this case evidence resting upon that high degree of probability, upon which the court, guided by its conscience, must act, that this trustee had a fraudulent purpose: if not, is there negligence so gross as to amount to constructive fraud, as Chief Justice Eyre expresses it, in *Plumb* v. *Fluitt*, such evidence of fraud that he shall not be heard in a court of justice to say there was not fraud? I agree, if the intention is fraudulent in any respect, though not pointing exactly to the object accomplished, yet he will be bound. This was Lord Thurlow's doctrine in *Beckett* v. *Cordley*, and was the doctrine in much older cases; as where a bond was given upon a marriage, and the marriage with that person went off, and took place with another, the party could not say the bond was not intended as to the marriage which took effect. The court would say it was a fraudulent act; and though not precisely that intended

(*b*) 3 P. W. 279.

by the parties, yet a use was made of it to which the delivery of that bond naturally led, and therefore he should be bound. If, therefore, in this case, I should be perfectly satisfied that the intention was according to the allegations in this bill, taken altogether, that he might represent himself as entitled to credit as owner of the premises, and obtain credit in his trade by representing himself as owner of the premises, and that Richard Bicknell acceded to that purpose, so understood, I should be strongly disposed to hold Bicknell liable to the extent in which Stansells, holding himself out as a owner, involved a third party. But I cannot say it is clear that, at the time of the application to Bicknell, Stansell had this design. It is not clear that it did not occur to him, after he had obtained possession of the deeds; and it is far from being clear upon the evidence, that Bicknell knew that such was the intention, for the transaction was not unnatural. I cannot expect them to reason upon the niceties of title. When we consider the title of the wife as her separate interest, it is an argument; but it would be very hard to press it as evidence of fraud, and a fraud of the nature of which such a trustee must be sensible; so that I must collect a frandulent purpose. I hesitate in giving Taylor credit for his evidence, carried in the deposition so much further than the answer, and the bill containing no allegation to give Bicknell the benefit of his answer, with the conversation, that the money should be repaid by two years' rents, and the circumstance that in the security the rents are really devoted to the principal as well as the interest. Then, if there is no express declaration or concealment by the trustee, it results to this: whether, under all the circumstances, and the answer and evidence together, the mere parting with the deeds for the purpose stated, and on condition to return them in a few hours to a man having the settlement in his possession, is a circumstance of so gross negligence, and because it may possibly lead to mischief, that it is conclusive evidence of fraud. I am very sorry the court acts upon a rule so loose and dangerous to property; but if such is the rule, I cannot, under the circumstances, upon this state of the record, charge Bicknell with this sum of 300*l.*"

This is the leading case on this point. It is in conformity with the prior case of *Peter* v. *Russell*, (*c*) and with the opinion of Lord Thurlow in *Tourle* v. *Rund*, (*d*) and has since been followed by Sir W. Grant, in the case of *Barnett* v. *Weston*, (*e*) by Lord Eldon himself in *Martinez* v. *Cooper*, (*f*) and by Sir John Leach, V. C., in *Harper* v. *Faulder*. (*g*)

It is, therefore, clear, that under the circumstances mentioned in *Evans*

---

(*c*) 1 Eq. Ca. Ab. 321, pl. 7; 2 Vern. 726, S. C.
(*d*) 2 B. C. C. 650.
(*e*) 12 Ves. 130.
(*f*) 2 Russ. 198.
(*g*) 4 Madd. 129.

v. *Bicknell*, a prior mortgagor will not be postponed, but equity will not assist him in the recovery of the deeds from a subsequent incumbrancer, he having chosen originally not to possess himself of them. (*h*)

In a late case, (*i*) Chief-Baron Alexander thus expressed himself with respect to the delivery of title-deeds to a mortgagee: "A point has been raised whether a mortgagee is entitled to pray the delivering up of title-deeds in a bill of foreclosure; and with respect to this point the common decree of foreclosure does not contain any such direction. I do not mean to say that, if there were a special contract for the delivery of the title-deeds after default to the mortgagee, that the court would not so decree; but it never would, except under particular circumstances, and I certainly should not do it in this case, as the plaintiffs are only mortgagees for years. I have never found, in any case, that a termor is entitled on account of the length of his term to the title-deeds." This case, therefore, peculiarly enforces the necessity for a mortgagee for a term of years demanding the delivery of the title-deeds on the execution of the mortgage.

## VIII.—Miscellaneous Points.

Power to mortgage under inclosure act.

By the general inclosure act, (*k*) power is given to husbands, guardians, trustees, committees, tenants in tail, tenants for life or for years, to charge the lands allotted to them, respectively, with the expenses at which such allotments shall be assessed by the commissioners, not exceeding 5*l.* per acre, and to mortgage, surrender, lease, or demise, such allotments to any person lending and paying such expenses for any term or number of years, for securing the payment thereof; and by the 30th section, if the particular tenant choose to pay the expenses himself, the commissioners are empowered, by any deed or writing under their hands and seals, to grant a mortgage for the allotments unto such particular tenant, for any term to commence after the determination of his estate, redeemable on payment of the money advanced and interest, so that a remainder-man should not be liable to pay more than six months' arrear of interest preceding his estate. And it seems that, where a term is created for securing the money advanced in paying the expenses of the act, it will take priority of all subsisting terms, and give an immediate right to the possession. (*l*)

Mortgages by traders.

A mortgage of *all* a trader's effects, to secure money advanced, is an act of bankruptcy, if the mortgagor continues in possession. (*m*)

---

(*h*) *Head* v. *Egerton*, 3 P. Wms. 280; *Ex parte Meux*, 1 Gl. & Jam. 116; *Wiseman* v. *Westland*, 1 Y. & Jer. 117.

(*i*) *Wiseman* v. *Westland*, *ubi supra*.

(*k*) 41 Geo. III. c. 109, s. 29.

(*l*) 1 Prest. Ab. 165; 1 Pow. on Mort. by Cov. 556, n.

(*m*) *Worsley* v. *De Mattos*, 1 Burr. 467.

Mortgages of real estates are not within the 6 Geo. IV. c. 16, s. 72, which enacts that goods in the possession, order, or disposition of the bankrupt, may be assigned by the commissioners. (*n*) But mortgages of personal estate follow the same rule as bonds or other personal estate. (*o*)

Where a bond by a surety is taken as a collateral security to a mortgage, and the surety pays the debt, he has a right to stand in the place of the mortgagee, for the mortgagor cannot get back his estate again without a conveyance, and that security remains a valid and effectual security, notwithstanding the bond debt is paid. (*p*)

A mortgagee will not be permitted to defend as landlord in an ejectment, without proof of his being interested in the result. (*q*)

It is now settled that a mortgagor in possession is, by construction, tenant at sufferance to the mortgagee, (*r*) and after default in payment of the mortgage money, the mortgagee may maintain an action of ejectment against the mortgagor, without any previous notice. (*s*)

Remedies of mortgagee on bankruptcy of mortgagor.

The remedies of a mortgagee on the bankruptcy of the mortgagor should here be shortly considered. It is expressly enacted, by the 6 Geo. IV. c. 16, (*t*) that the security of the mortgagor shall not be affected by the bankruptcy of the mortgagee, but he will not be allowed to prove under the commission and then resort to his security for the residue; for if he have a security and insists upon proving, he must deliver it up, for the benefit of the creditors at large, before he can prove. (*u*)

However, by the general order in bankruptcy made by Lord Loughborough, dated 8th March, 1794, the commissioners named in a commission of bankruptcy may, upon application made to them, proceed to inquire whether a person is a mortgagee, and for what consideration, and under what circumstances; and if the commissioners find such person to be a mortgagee, and no sufficient objection shall appear to his title or to the sum claimed by him, then that the commissioners do proceed to take an account of the principal, interest, and costs due upon such mortgage, and the profits of the mortgaged premises received by the mortgagor, or by any other per-

---

(*n*) *Jones* v. *Gibbons*, 9 Ves. 407, and *Wallwyn* v. *Assignees of Shepherd*, there cited, p. 411, and *Ex parte Vauxhall Bridge Company*, 1 Gl. & Jam. 101.

(*o*) *Ryall* v. *Rowles*, 1 Atk. 165, S. C., 1 Ves. 348.

(*p*) *Copes* v. *Middleton*, Turn. 224.

(*q*) *Doe* d. *Pearson* v. *Roe*, 6 Bing. 613; but see *Doe* d. *Tilyard* v. *Cooper*, 8 T. R. 645.

(*r*) *Partridge* v. *Bere*, 5 B. & A. 604.

(*s*) *Doe* d. *Fisher* v. *Giles*, 5 Bing. 421.

(*t*) s. 108, *ante*, p. 252.

(*u*) *Ex parte Grove*, 1 Atk. 104; *Ex parte Twogood*, 19 Ves. 231.

son or persons for his use; and that the commissioners cause due notice to be given in the London Gazette, and in such other of the public papers as they shall see fit, when and where the mortgaged premises are to be sold by public auction, and that such sale be made accordingly, and that the monies to arise from the sale be applied, after payment of the expenses of the sale, in payment of what shall be found due to such mortgagee for principal, interest, and costs, and that the surplus of the said monies, if any, be paid to the assignees of the said bankrupt; but if the monies to arise from the sale shall be insufficient to pay what shall be found due to such mortgagee, then that such mortgagee shall be admitted as a creditor under the said commission for such deficiency, but so as not to disturb any dividend then already made. (*x*)

If the equity of redemption be not in the bankrupt, the commissioners cannot, under their general orders, direct a sale; (*y*) nor can they compel a second mortgagee, not claiming under the commission, but relying on his security, to join in a sale obtained by a first mortgagee. (*z*) The only way, therefore, in this case, to make a title, is for the creditors to redeem both mortgages. (*a*) But if the second mortgagee be present at the time the order for sale is made, and suffers the sale to gone on, he cannot afterwards object to joining. (*b*)

If there be a first and second mortgagee, the second mortgagee may petition the Chancellor that the premises may be sold, (*c*) or he may apply to the commissioners for a sale under the general order; (*d*) and it may be questioned whether the latter is not now the only, as it certainly is the preferable, remedy open to him, besides a foreclosure. If the produce of the estate be insufficient to discharge the debt and costs, the mortgagee proving for the remainder under the commission, cannot charge interest beyond the date of the commission. (*e*) A mortgagee with a power of sale, may, if he please, on the bankruptcy of the mortgagor, waive the special power conferred on him by it, and apply to the court for a sale in his general character as mortgagee, and if the sale is before the commissioners and conducted by the assignees, the petitioner may bid. (*f*)

---

(*x*) 4 B. C. C. 550, 2 Cooke, B. L. 284.
(*y*) *Ex parte Topham*, 1 Madd. 38.
(*z*) *Ex parte Jackson*, 5 Ves. 357, 1 Madd. 38, n.
(*a*) 2 Christ. B. L. 110.
(*b*) *Ex parte Jackson, ubi supra;* Pow. Mort. by Cov. 1081, *b.*
(*c*) *Ex parte Howell*, 7 Vin. Ab. 102.
(*d*) 2 Christ. B. L. 108.
(*e*) *Ex parte Badger*, 4 Ves 165.
(*f*) *Ex parte Hodgson*, 1 Gl. & Jam. 14.

If a mortgagee once elects to prove under the commission as a creditor, he cannot afterwards retract and insist on abiding by his security. (*g*)

A mortgagor, who takes a security from two persons, one as principal, and the other as surety, need not give up his joint security upon the bankruptcy of the principal, for he may come in as a general creditor; and, if that be insufficient to pay him his whole debt, he may afterwards resort to the surety upon his joint security. (*h*) So, where a bankrupt, previous to the commission against him, procured persons to assign an interest in copyhold premises, as a security to a creditor of his, it was held that the creditor might prove under the commission, without delivering up such security. (*i*) But the court would not order a sale of the premises for more than the mortgage debt, or pay a debt due on the bankrupt's recognizance in aid of his sureties, where the recognizance was of a private nature. (*k*)

Where a mortgagee has a bond as a collateral security, and the mortgagor becomes bankrupt before the time appointed for repayment of the principal money, if default has been made in the payment of interest, contrary to the usual proviso, the mortgagee may prove for the principal sum and interest, then due, as a present debt; for one default makes him a legal creditor for the whole penalty. (*l*)

If a mortgagee gives notice to the tenants in possession to pay the rent to him, and he pays it to the assignees of the mortgagor, the assignees will be ordered to refund it to the mortgagee; but, if the mortgagor himself receive the rents, he will not be compelled to pay them over to the mortgagee. (*m*) A mortgagee of a bankrupt estate, though he pays the arrears of rent that are due to the bankrupt's landlord, will not be preferred to the creditors under the commission, unless he apply to the court for an order, that he may stand in the place of the landlord, in consideration of his paying the arrears of the rent; (*n*) and it rather seems that no such order could be obtained, because, unless the landlord actually distrain, he has himself no lien on the goods. (*o*)

By the 43 Geo. III. c. 69, sched. A, a duty of sixpence in the pound is imposed on sales by auction; but it is provided, by the fifteenth section, that nothing in the act shall extend to charge with the said duty any

---

(*g*) *Ex parte Downes*, 18 Ves. 290.
(*h*) *Ex parte Wildman*, 2 Atk. 527; *ex parte Parr*, 1 Rose, 76.
(*i*) *Ex parte Goodman*, 3 Mad. 373.
(*k*) *Ex parte Usher*, 1 Bale, S. B. 197; 2 Pow. Mort. by Cov. 1083, *a*.
(*l*) *Ex parte Fisher*, 3 Madd. 159, S. C.; 1 Buck. 188.
(*m*) *Ex parte Wilson*, 1 Rose, 444, S. C.; 2 Ves. and Bea. 252.
(*n*) *Anon.* 1 Atk. 102.
(*o*) Cooke's B. L. 185.

estate or effects of bankrupts, sold by order of the assignees, under any commission of bankruptcy. It has been held, however, at *nisi prius*, by Lord Kenyon, that sales, under the general order mentioned in p. 268, are subject to the auction duty, notwithstanding the exception of the statute, because the property sold is in fact the property of the mortgagee, and not of the bankrupt (*p*) And this case has been followed in the more recent case of *The King* v. *Abbott*, (*q*) with this distinction, that, if the assignees take upon themselves to sell, not merely the equity of redemption, to which only they are entitled, but the whole property absolutely, they will be liable for the duty, because they cannot state, in their certificate, that all and every estates, goods, &c. specified in the catalogue, were really and truly the property of the bankrupt at the time of issuing forth the commission. Baron Graham said, that it was a frequent practice to direct a sale of an equity of redemption alone, and that was what the assignees should have done. It was not important, whether the mortgagee's assent were expressed or implied. The assignees chose to sell the whole, and might have pledged themselves to make a title to the purchaser; and if, in doing so, they took upon themselves to sell the property unincumbered, for their greater advantage, they must do it, with all its consequences. In the case of pledges of formal goods, the property was substantially in those who had the rightful possession. In this instance, the learned baron was clearly of opinion, that the assignees had made themselves liable to pay the duty. Baron Richards said, if the mortgagor had sold his mortgage by auction, he would have become liable to pay the duty, although the sale had not proved sufficiently productive to pay his debt. The opinions of Lord Kenyon, expressed in *Coare* and *Creed*, and of the learned barons, in *The King* v. *Abbott*, have been questioned by Mr. Christian, in his work on the Bankrupt Laws, p. 587.

As to mortgage accounts.

The mortgagor generally has the possession of the lands, the conveyance by mortgage being looked upon rather as a collateral security for the due payment of the money lent, and interest thereupon, than as an actual alienation; and the mortgagee is considered as having no right to the rents and profits until after he has taken possession. (*r*). If the interest be not regularly paid, the mortgagee ought to resort to his legal remedy, and obtain possession of the premises; and in no instance has the mortgagor been compelled to account to the mortgagee under such circumstances. (*s*) And the courts adhere so strictly to this principle,

---

(*p*) *Coare* v. *Creed*, 1 Esp. 699.

(*q*) 3 Pri. 178.

(*r*) *Mead* v. *Orrery*, 3 Atk. 244, 2 Atk. 107; *Moss* v. *Gillimore*, Doug. 269.

(*s*) *Ex parte Wilson*, 2 Ves. and B. 252.

that they have refused to dispense with it, even in the case of a mortgage upon an estate for lives, which had become insufficient; (*t*) and it has been recently held, that a mortgagee of a term which is expired, is not entitled to a retrospective account of the rents and profits which accrued due before the expiration of the term. (*u*)

If the mortgagee enters and takes possession, he must then account for the profits; (*x*) and if he has kept the accounts so negligently that it is impossible to ascertain what is due, it is by no means certain that a court of equity may not hold that nothing is due to him, (*y*) and he certainly would not be allowed to retain possession. (*z*)

For further information as to mortgages, the works of Messrs. Powell (with Mr. Coventry's useful additions), Coote, and Patch, may all be consulted with advantage.

---

(*t*) *Coleman* v. *Duke of St. Albans*, 3 Ves. 25.

(*u*) *Grasley* v. *Adderley*, 1 Swanst. 579.

(*x*) *Gould* v. *Tancred*, 2 Atk. 534, 1 Cha. Ca. 220.

(*y*) *Codrington* v. *Parker*, 16 Ves. 469; and see *Berney* v. *Sewell*, 1 Jac & Walk. 649.

(*z*) *Quarrell* v. *Beckford*, 13 Ves. 377, 16 Ves. 177.

MEMORANDUM OF EQUITABLE DEPOSIT OF DEEDS.

MEMORANDUM *of* DEPOSIT *of Title-Deeds belonging to a Public-House, left with Brewers, as a security for money owing, and for further advances.* (*a*)

MEMORANDUM. That I, the undersigned [A. B.] have this day deposited with Messrs. and Co., of , in the county of Middlesex, brewers, the lease and assignments, under which I hold the King's Head public-house and premises, in Street, as a security to them, and all future copartner or copartners in the said firm, for the payment, upon demand, of the sum of pounds, now lent to me by the said Messrs. and Co., together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the date hereof; *And* also of all such further sum or sums of money as shall or may, at any time or times hereafter, become due from me to them, as well for goods sold and delivered, as for money lent or paid, or on any other account whatsoever, together with interest for such further sum or sums of money respectively (excepting the money due for goods sold and delivered), after the rate aforesaid, to be computed from the time or times of such sum or sums respectively becoming due. (*b*) As WITNESS my hand, this day of 18

[A. B.]

In the presence of
[X. Y.]
[Y. Z.]

---

(*a*) The principal points relating to equitable mortgages by deposit of title-deeds are noticed in the Introductory Observations; to which the reader is referred.

(*b*) In many memorandums like the above, words of charge and agree-

MEMORANDUM OF EQUITABLE DEPOSIT OF DEEDS.

ment to execute a mortgage are introduced; but, as such words render the instrument liable to mortgage *ad valorem* duty, they should in general be carefully avoided. In most cases, where the security of a mere equitable deposit of title-deeds is accepted, a principal object of the parties is to save the expense of a formal mortgage, and particularly the stamp-duty. When it is intended to pay the duty, the following may be added to the above memorandum:—

"*And* I hereby charge the said public-house and premises with the payment of all and every such sum or sums of money, and interest, as aforesaid, and every part thereof; *And* I do hereby undertake and agree, at my own expense, to execute a regular and valid mortgage of the same house and premises, either by assignment or demise, and with full powers of sale, at any time, when required so to do by the said Messrs. and Co., for the amount which may be then due to them."

A clause for limiting the amount secured should also be inserted, and may be thus:—

"Provided always, that the total amount of the principal money recoverable upon, and to be secured by the deposit hereinbefore mentioned, and the mortgage hereinbefore agreed to be made as aforesaid, shall in no case exceed the sum of pounds."

DEED *of* COVENANT (*a*) *to execute a* MORTGAGE;— *accompanying a deposit of Title-Deeds.*

COVENANT TO EXECUTE A MORTGAGE.

THIS INDENTURE, made the day of 18 , between [*mortgagor*], of, &c. of the one part, and [*mortgagee*], of, &c. of the other part. WHEREAS the said [*mortgagor*] is seised of or well entitled to the messuages or tenements, lands, and hereditaments, mentioned in the first schedule hereunder written, and their appurtenances, and the inheritance thereof, in fee simple, in possession, free from incumbrances, except the leases mentioned or referred to in the last column of the same schedule. AND

Parties.

Recites that the mortgagor is seised in fee of the hereditaments mentioned in the first schedule.

---

(*a*) A mere agreement is often used; in which case the instrument should be headed—

"ARTICLES of AGREEMENT, made and entered into, this day of," &c.

Agreement.

And the witnessing part should be—

"NOW THESE PRESENTS WITNESS, that," &c.

A deed or agreement of this kind is liable to the mortgage *ad valorem* duty, since it is provided by the Stamp Act, 55 Geo. III. c. 184, schedule, Part I. MORTGAGE, that "an agreement, accompanied with a deposit of title-deeds for making a mortgage," shall be subject to such duty; but it should be observed, that the mortgage-deed to be executed in pursuance of such deed or agreement, will be liable to the common deed-stamps only, and not to any further *ad valorem* duty. It is, perhaps, the best mode to take a bond for the money lent, and pay the *ad valorem* bond-duty on it, and to stamp the deed of covenant or agreement, of even date with the common deed or agreement stamp, and when the mortgage is executed, to stamp that also with the ordinary deed-stamps. After the mortgage is executed, the deed of covenant, or agreement to execute it, may, in many cases, be cancelled or destroyed; but where the mortgage is made by a person liable to the bankrupt law, it is the most prudent course to preserve the deed or agreement.

Stamp.

COVENANT TO EXECUTE A MORTGAGE.

And that the mortgagee has lent him *l.* at interest, and that, for securing the repayment of it, the mortgagor has deposited with the mortgagee the title-deeds and writings, mentioned in second schedule; and agreed to covenant, as after mentioned.

Witnessing part.

WHEREAS the said [*mortgagee*] hath this day advanced and lent to the said [*mortgagor*] the sum of pounds, of lawful money of Great Britain, at interest, after the rate of 5*l.* for 100*l.* by the year, and to be repaid on the day of now next ensuing; *And* for securing the repayment of such sum, with interest, as aforesaid, the said [*mortgagor*] hath (*b*) this day deposited in the hands of the said [*mortgagee*] the several title-deeds and writings specified and set forth in the second schedule hereunder written, and which respectively relate to the said messuages or tenements, lands, and hereditaments mentioned in the said first schedule hereunder written; *And* hath agreed to enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the said agreement, and in consideration of the said sum of pounds, so paid by the said [*mortgagor*] to the said [*mortgagee*], as hereinbefore is mentioned and recited, HE, the said [*mortgagor*], doth hereby, for himself, his heirs, executors, and administrators, COVENANT, declare, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following (that is to say), that (*c*) all and singular the said title-deeds and writings specified and set forth in the said second schedule hereunder written, and so deposited with the said [*mortgagee*], as hereinbefore is mentioned, shall be and remain a security unto the said [*mortgagee*], his executors, administrators, and assigns, for the repayment of the said sum of pounds, so advanced and lent to the said [*mortgagor*] by the said [*mortgagee*], as aforesaid, with interest for the same, after the rate hereinbefore mentioned, on or at the day or time hereinbefore expressed, without any deduction or abatement whatever. *And further*, that he, the said [*mort-*

The mortgagor covenants with the mortgagee, that the title-deeds and writings, mentioned in the second schedule, shall be and remain a security for the aforesaid sum and interest;

---

Bond.

(*b*) If a bond be given, say,—

"by a bond or obligation under his hand and seal, bearing even date herewith," &c. (*recital of a bond, see post*, p. ), "and hath," &c.

(*c*) The covenant for payment (see p. 278) is often made the first covenant. When a bond is given, the covenant may be altogether omitted.

*gagor*], and his heirs, and all other necessary parties, shall and will, at any time hereafter, upon the request in writing of the said [*mortgagee*], his executors, administrators, or assigns, and by such conveyances and assurances as he or they, or his or their counsel in the law, shall reasonably advise and require (but at the costs and charges of the said [*mortgagor*], his heirs, executors, or administrators), well and effectually convey and assure the said messuages or tenements, lands, and hereditaments, mentioned in the said first schedule hereunder written, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, free from all incumbrances whatsoever, save and except the leases mentioned or referred to in the said first schedule hereunder written, but subject to a proviso or agreement for redemption and reconveyance, on payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of pounds, with interest for the same, after the rate aforesaid, on or at the day or time, and in manner hereinbefore mentioned. ***And also,*** that in the said conveyances and assurances so to be made as aforesaid, shall be contained or inserted proper powers and provisions for keeping the said messuages or tenements, lands and hereditaments, insured against loss or damage by fire, in the sum of pounds, during the continuance of the said security, and for enabling the said [*mortgagee*], his heirs, executors, administrators, or assigns, to lease all or any of the said messuages or tenements, lands, and hereditaments, which, during the continuance of the said security, may become untenanted, to any person or persons, for any term not exceeding fourteen years, at the best rent, and under the usual restrictions, and for enabling the said [*mortgagee*], his heirs, executors, administrators, or assigns, to sell and dispose of the said messuages or tenements, lands, and hereditaments, or any part thereof, either by public auction or private contract, as he or they shall think advisable, in case default shall be made in the payment of the aforesaid sum of pounds, or the interest, for the space of six calendar months after the same shall be called in, and also all such other powers,

COVENANT TO EXECUTE A MORTGAGE.

and that he, the mortgagor, and all other necessary parties, will, on request, convey the hereditaments in the first schedule, to the mortgagee in fee, but subject to redemption, on payment of the aforesaid sum and interest;

and that in such conveyance shall be contained a power of sale, and other proper clauses, &c.

COVENANT TO EXECUTE A MORTGAGE.

provisions, clauses, covenants, and agreements, as the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel, shall reasonably require. *And further*, that in the mean time, and until such conveyances and assurances as aforesaid shall be made and executed, he, the said [*mortgagor*], and his heirs, shall and will stand and be seised of and interested in the said messuages or tenements, lands, and hereditaments, therein to be comprised, as hereinbefore is mentioned, and their appurtenances, *In trust* for the said [*mortgagee*], his executors, administrators, and assigns, for securing to him and them the said sum of pounds, and the interest thereof, in manner hereinbefore expressed. *And lastly*, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will, on the said day of , now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, or administrators, the said sum of pounds, with interest for the same, after the rate, and to be computed from the time hereinbefore mentioned, clear of all deductions and abatements whatsoever; *And* shall and will, upon demand, pay and discharge all costs, charges, and expenses whatsoever, which shall be incurred or sustained by the said [*mortgagee*], his executors, administrators, or assigns, or his or their attorney or attorneys, or solicitor or solicitors, in investigating, deducing, and making out the title to the said messuages or tenements, lands, and hereditaments, and in procuring and perfecting the conveyances and assurances hereinbefore agreed to be made as aforesaid, and in preparing and obtaining the aid, assistance, and advice of counsel therein. (*d*) IN WITNESS, &c.

and that, until such conveyance shall be executed, the mortgagor will stand seised of the hereditaments, as a trustee for the mortgagee;

and that the mortgagor will pay the aforesaid sum, and interest, at the time before mentioned;

and will, on demand, pay all the expenses of investigating the title to the hereditaments, and preparing the securities.

(*Here add the Schedules.*)

(*d*) Sometimes it is provided, that if a good title cannot be deduced within a month, or some other definite period, the person borrowing shall repay the money, with interest, on demand, or within a few days after demand. A clause to that effect may be easily framed, when it is necessary. In most instances in which the money is advanced before the title to the estate intended to be mortgaged has been investigated, it is desirable that the repayment of the money should be guaranteed by a third person, in case the title should prove defective.

MORTGAGE IN FEE. SIMPLE FORM.

### MORTGAGE *in* FEE *of a Freehold Estate in the occupation of Tenants from Year to Year.—(Simple Form.)*

THIS INDENTURE, made the day of , 1830, between [*mortgagor*], of, &c., of the one part, and [*mortgagee*], of, &c., of the other part. Parties.

WHEREAS the said [*mortgagor*] is seised of or well entitled to the messuages or tenements, lands, hereditaments, and premises hereinafter described, and intended to be hereby granted or released, and their appurtenances, for an estate of inheritance in fee simple in possession, free from incumbrances. (*a*) Recites that the mortgagor is seised in fee of the hereditaments after mentioned;

AND WHEREAS the said [*mortgagor*], having occasion for the sum of pounds, hath requested the said [*mortgagee*] to advance and lend him the same, which he, the said [*mortgagee*], hath consented and agreed to do, upon having the repayment thereof, with interest for the same, after the rate of 4*l.* 10*s.* for every £100 by the year, secured at the time and in manner hereinafter expressed, by a mortgage in fee of the said messuages or tenements, lands, hereditaments, and premises, hereafter described, and intended to be hereby granted and released, and their appurtenances. (*b*) Now and that, having occasion for a sum of ——— *l.* the mortgagor has agreed to lend it, on having the same secured with interest by a mortgage in fee of the said hereditaments.

(*a*) It is often advisable to commence a mortgage with a mere recital of the seisin of the mortgagor, and to omit all reference to the deeds of conveyance under which he claims the property purposed to be mortgaged; but, unless the circumstances of the title are such as to make this course expedient, it is more usual to recite the deeds of conveyance. For various forms of such recitals, see the succeeding precedents, and Index, RECITAL.

(*b*) If the mortgage-money is secured by bond, or by a conveyance or assignment of other property, or any term of years is assigned to attend the inheritance, or a power of sale or other special power is given, or the money is to be applied in a particular manner, it is usual to refer to the fact in this place. Various recitals of this description will be found in the different precedents under the present title.

MORTGAGE IN FEE.

SIMPLE FORM.

THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, by the said [*mortgagee*], to the said [*mortgagor*], in hand, well and truly paid at or immediately before the sealing and delivery of these presents (the receipt of which said sum of pounds the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same and every part thereof doth hereby acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns); HE, the said [*mortgagor*], *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [*mortgagee*] (in his actual possession, &c., *reference to lease for a year*), and his heirs, ALL THAT messuage or tenement, with the garden, yard, stable, and outbuildings thereto belonging, situate and being at , in the parish of , in the said county of , formerly in the occupation of [ ], afterwards of [ ], and now of [ ], as tenant thereof, from year to year; *And also* ALL THAT messuage or tenement, and farm-house, &c. &c. (*c*), Together with all and singular houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, backsides, commons, common of pasture, common of turbary, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, and appurtenances whatsoever, to the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any of them, belonging or in anywise appertaining, or with the same or any of them used, held, occupied, possessed, or enjoyed, or deemed, taken, or known as or to be part, parcel, or member thereof; *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the same messuages or tenements, lands, hereditaments, and premises, and their appurtenances, and of every part thereof; *And* all the

Witnessing part.

The mortgagor, in consideration of *l.* paid by the mortgagee, conveys to the mortgagee and his heirs.

Parcels.

General words.

And the reversion, &c.

(*c*) For different descriptions of Parcels, see Index, PARCELS.

MORTGAGE IN FEE.

SIMPLE FORM.

estate, right, title, interest, inheritance, use, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, out of, or upon the same premises, and every or any part thereof, TO HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*mortgagee*], and his heirs, ***To the use*** of him, the said [*mortgagee*], his heirs and assigns, for ever; ***But*** subject, nevertheless, to the provision or agreement for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do, (*d*) on the day of now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds,

And all the estates, &c.

Habendum unto and to the use of the mortgagee, his heirs and assigns; but subject to the proviso for redemption hereinafter contained.

Proviso for redemption.

(*d*) The following form is often used:—

"Provided always, and it is hereby agreed and declared between and by the said parties to these presents, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, and the sum of pounds of like lawful money, as and for one year's interest for the same, after the rate of 5*l.* for 100*l.* by the year (making together the sum of pounds), in the parts, shares, or portions, and on or at the days or times, hereinafter mentioned; (that is to say), the sum of pounds, part thereof (being half-a-year's interest for the said sum of pounds, after the rate aforesaid), on the day of next ensuing the date of these presents; *And* the sum of pounds, residue thereof (being the whole of the said sum of pounds, and another half-year's interest for the same, after the rate aforesaid), on the day of then next following (which will be in the year 183 ), without making any deduction," &c.

Proviso for redemption.

MORTGAGE IN FEE.

SIMPLE FORM.

of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 4*l.* 10*s.* for every £100, by the year, to be computed from the day of the date of these presents, without making any deduction or abatement out of the same sum and interest, or any part thereof, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *Then*, and in such case, he, the said [*mortgagee*], his heirs or assigns, shall and will, at the request and proper costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, re-convey the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, unto the said [*mortgagor*], his heirs or assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*mortgagee*], his heirs or assigns, so as for the doing thereof he or they be not compelled or compellable to go or travel from his or their usual place or places of abode or dwelling. (*e*) AND the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will well and truly pay, or cause to be

Covenant from the mortgagor, for payment of the principal and interest.

---

Covenant for payment not necessary.

(*e*) A covenant for payment of the money is almost always inserted in a mortgage; but without any such covenant the money due on a mortgage is primarily payable out of the borrower's personal estate, which must exonerate the real estate. *Cope* v. *Cope*, 2 *Salk.* 449; *Howel* v. *Price*, 1 *P. W.* 292; *Booth* v. *Blundell*, 1 *Mer.* 216. This covenant, being a personal covenant, should be entered into with the mortgagee, his executors, administrators, and assigns, or rather—as a debt is not assignable *at law*—with the mortgagee, his executors and administrators. *Caubam* v. *Rust*, 2 *J. B. Moore*, 154. The covenant in the above precedent is in the most usual form; but it is sometimes recommended that the *times* for payment of the money and interest should be expressly stated in the covenant, and not mentioned by reference to the proviso for redemption, as such reference in the latter case makes it necessary to set out the proviso fully in the pleadings, in any action which may be brought on the covenant.

MORTGAGE IN FEE.
SIMPLE FORM.

paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same after the rate of 4*l.* 10*s.* for every 100*l.* by the year, to be computed from the day of the date of these presents, on or at the day or time mentioned in the aforesaid proviso or agreement for payment of the same, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents. And the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his heirs and assigns, (*f*) in manner following (that is to say), that (*g*) he, the said [*mortgagor*], is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and equitably entitled to a good, sure, absolute, and indefeasible estate of inheritance in fee simple, in possession of and in the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, without any condition, trust, power of revocation, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, incumber, lessen, determine, defeat, or make void the same estate; *And* that he,

Usual covenants from the mortgagor for title.

---

(*f*) When the property mortgaged is personal estate, the covenants for title, as well as the covenant for payment of the money, should be made with the *executors, administrators,* and assigns of the mortgagee, and no separate commencement to the covenants for title is necessary: but in mortgages of freehold and copyhold estates, the covenants for title, in order to run with the land, should be entered into with the *heirs* and assigns of the mortgagee, and for that purpose a separate commencement to such covenants is requisite. The reason for repeating the commencement to the covenants for payment and title is not very evident to beginners and unprofessional persons.

As to covenants for title in mortgage.

(*g*) In mortgages it is usual to introduce *general* covenants for title, while in purchase-deeds the covenants are almost always limited, and extend to the acts of the vendor only, or to his acts and the acts of the immediate party through whom he claims. The reason for this difference in practice is not obvious, or easy to be explained; but it is supposed to have originated in the different degrees of care formerly bestowed in the investigation of titles on mortgage and purchase transactions.

MORTGAGE IN FEE.
SIMPLE FORM.

the said [*mortgagor*], now hath in himself good right, full power, and absolute authority, to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, in manner aforesaid, according to the true intent and meaning of these presents; *And* also, that if the said sum of pounds, or the interest thereof, or any part thereof respectively, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then*, and in such case, it shall and may be lawful to and for the said [*mortgagee*], his heirs or assigns, at any time or times thereafter, into or upon the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, to enter, and the same from time to time, and at all times thereafter, peaceably and quietly to have, hold, use, occupy, possess, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take, without any let, suit, trouble, denial, eviction, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his heirs or assigns, or any person or persons whomsoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest whatsoever, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, or any of them, or any part thereof; *And* that free and clear, and freed and clearly, and absolutely acquitted, exonerated, released, and for ever discharged or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, well and effectually saved, defended, kept harmless, and indemnified of, from, and against all manner of former and other gifts, grants, bargains, sales, jointures, dowers, leases, mortgages, uses, trusts, wills, intails, annuities, rent-charges, rents seck, and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, exemptions, extents, seizures, sequestrations, and all

MORTGAGE IN FEE. SIMPLE FORM.

other estates, titles, troubles, charges, debts, and incumbrances whatsoever; *And* moreover, that if the said sum of pounds, or the interest thereof, or any part thereof respectively, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then*, and in such case, the said [*mortgagor*], and his heirs, and all and every other persons and person whosoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest whatsoever, in, to, or out of the said messuages or tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, shall and will from time to time, and at all times thereafter, upon the request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, things, conveyances, and assurances, in the law whatsoever, for the better and more perfectly and absolutely granting, conveying, and assuring of the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, (*h*) in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their, or any of their counsel in the law, shall be reasonably devised, or advised and required. PROVIDED ALWAYS, and it is hereby

(*h*) Some gentlemen introduce in this place the words "freed and absolutely discharged of and from the proviso or agreement for redemption hereinbefore contained, and all right, title, and equity of redemption whatsoever, subsisting under or by virtue thereof, as by," &c., instead of the above expression, "in manner aforesaid," &c. The latter expression is the most correct, for the covenant to convey, in case of default, "free from all equity of redemption," will clearly not be of any force to destroy the subsisting right of redemption in equity.

MORTGAGE IN FEE.

SIMPLE FORM.

Proviso for quiet enjoyment by the mortgagor, until default.

agreed and declared, between and by the said parties hereto, that until default shall be made in payment of the said sum of pounds, or the interest thereof, or of some part thereof respectively, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to and for the said [*mortgagor*], his heirs or assigns, peaceably and quietly to have, hold, occupy, possess, or enjoy the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any let, suit, trouble, interruption, or disturbance whatsoever, of or by him the said [*mortgagee*], his heirs or assigns, or any person or persons lawfully or equitably claiming, or to claim by, from, or under, or in trust for him, them, or any of them. (*i*) IN WITNESS, &c.

---

### MORTGAGE *in* FEE.—*(Very concise Form.)*

MORTGAGE IN FEE.

CONCISE FORM.

Parties.

The mortgagor, in consideration of *l.*

THIS INDENTURE, made the day of , 18 , between [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part, WITNESSETH, that in consideration of the sum of pounds, of lawful money of Great Britain, by the said [*mortgagee* ] to the said [*mortgagor*] in hand, paid at or immediately before the sealing and delivery of these presents (the receipt whereof the said [*mortgagor*] doth hereby acknowledge) HE, the said [*mortgagor*], *Doth* by these presents grant,

---

(*i*) Powers of sale, leasing, and insuring against damage by fire, are often inserted, and will be found in several of the succeeding precedents.

MORTGAGE IN FEE.

CONCISE FORM.

bargain, sell, release, and confirm unto the said [*mortgagee*], his heirs and assigns, ALL THAT messuage or tenement, &c. (*parcels*), *And* all and singular the appurtenances to the said messuages, hereditaments, and premises belonging or appertaining, (all which said messuages, hereditaments, and premises are now in the actual possession of the said [*mortgagee*], by virtue of a lease for a year to him thereof made by the said [*mortgagor*], by an indenture of bargain and sale bearing date the day next before the day of the date hereof,) *And* the reversion, &c., *And* all the estate, &c., TO HAVE AND TO HOLD the said messuages, hereditaments, and all and singular other the premises hereby released, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever; *But* subject, nevertheless, to the proviso or condition hereinafter contained (that is to say), PROVIDED ALWAYS, that if the said [*mortgagor*], his heirs, executors, or administrators, shall and do pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, with interest for the same, after the rate of 5*l.* for 100*l.*, by the year, on the day of now next ensuing, without any deduction or abatement whatsoever; *Then*, and in such case, these presents, and the lease for a year hereinbefore mentioned, and the estates thereby respectively created, and every agreement, matter, and thing therein respectively contained, shall cease, determine, and be void, to all intents and purposes whatsoever. (*a*) AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and agree with the said [*mortgagee*], his executors, and administrators, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will pay to the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds and interest, at the time and in manner hereinbefore mentioned, without any deduction whatso-

conveys to the mortgagee and his heirs,

parcels.

*Habendum* to the mortgagee and his heirs, subject to a proviso for avoiding the conveyance, if the money be paid at the time appointed.

(*a*) As to Defeazances and Conditions, see Vol. IV. p. 45. The general and best mode is to provide that the mortgagee shall reconvey.

MORTGAGE IN FEE.

CONCISE FORM.

ever. And the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and agree with the said [*mortgagee*], his heirs (*b*) and assigns, in manner following, (that is to say); *That* he, the said [*mortgagor*], now hath in himself good right to grant, release, and convey the said messuages, hereditaments, and premises hereby released, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, in manner aforesaid; *And* that it shall be lawful for the said [*mortgagee*], his heirs and assigns, after default shall be made in payment of the said sum of pounds and interest, or any part thereof, contrary to the proviso hereinbefore contained, peaceably to enter upon the same messuages, hereditaments, and premises, and to hold and enjoy the same without any interruption, claim, or demand whatsoever, from or by the said [*mortgagor*], or any other person whomsoever; *And* that he, the said [*mortgagor*], and his heirs, and all other persons whosoever, having or claiming any estate or interest whatsoever in the premises, shall and will, upon every reasonable request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, or administrators, make and execute all such further deeds, conveyances, and assurances for the better and more perfectly conveying and assuring the said messuages, hereditaments, and premises, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, subject to the aforesaid proviso or condition, and all equity of redemption subsisting under or by virtue thereof, as by the said [*mortgagee*], his heirs or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required. PROVIDED, nevertheless, and it is hereby agreed, that until default shall be made in payment of the said sum of pounds and interest, or some part thereof, contrary to the proviso or condition hereinbefore contained, it shall be lawful for the

Short covenants for the title.

Proviso for quiet enjoyment by mortgagor until default.

(*b*) See *ante*, p. 282, n. (*e*).

said [*mortgagor*], his heirs and assigns, to occupy and enjoy, or receive and take the rents and profits of the said messuages, hereditaments, and premises and their appurtenances, without any interruption or denial whatsoever, of, from, or by the said [*mortgagee*], his heirs or assigns, or any person claiming under him or them. IN WITNESS, &c.

MORTGAGE IN FEE. CONCISE FORM.

---

DEED *of* CHARGE *for securing a* FURTHER *Sum of Pounds, and Interest: (indorsed on the Mortgage.)* (*a*)

FURTHER CHARGE BY DEED INDORSED.

THIS INDENTURE, made the day of , 18 , between the within-named [*mortgagor*] of the one part; and the within-named [*mortgagee*] of the other part. WHEREAS the said [*mortgagor*], having occasion for a sum of pounds, hath applied to the said [*mortgagee*] to lend him the same, which he, the said [*mortgagee*], hath consented and agreed to do, upon having the repayment thereof, with interest for the same, after the rate of 4*l.* for 100*l.* by the year, secured to him on or at the day or time hereinafter mentioned by the covenants and agreements hereinafter contained, and in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great

Parties.

Recites the agreement by the mortgagor to lend to the mortgagee the sum of *l.*, on having the repayment thereof, with interest, secured by the covenants after contained.

Witnessing part.

The mortgagor covenants, in consideration

---

(*a*) If it is wished to have the further charge by a separate deed, recite the mortgage-deed, and refer to it as,—

Separate instrument.

"the said hereinbefore-recited indenture," instead of "the said within-written indenture."

FURTHER CHARGE BY DEED INDORSED.

of *l.* to him paid by the mortgagee,

to pay to the mortgagee the sum of *l.* and interest, on certain days therein specified;

that the premises comprised in the within deed shall remain vested in the mortgagee as a security for such sum and interest;

and shall not be redeemed until payment thereof;

Britain and Ireland, by the said [*mortgagee*] to the said [*mortgagor*] paid, at or immediately, &c. (the receipt of which said sum of pounds, &c.), He, the said [*mortgagor*], *doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 4*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, on or at the days or times and in manner following (that is to say): the sum of pounds (being, &c. as *ante*, p. 281); *And* shall and will make the said payments without any deduction or abatement out of the same, or any part thereof respectively, for or on account of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *And further*, that the manor or lordship, messuages or tenements, farms, lands, tithes, hereditaments, and premises, comprised in and conveyed by the within-written indenture, and the lease for a year upon which the same is grounded, and their rights, members, and appurtenances, shall be and remain vested in the said [*mortgagee*], his heirs and assigns, as a security as well for the said sum of pounds (*b*) and interest, hereby covenanted to be paid as aforesaid, as for the within-mentioned sum of pounds and the interest thereof; *And* that the said manor or lordship, messuages or tenements, farm lands, tithes, hereditaments, and premises, and their rights, members, and appurtenances, or any of them, or any part thereof respectively, shall not be redeemed or

---

Stamp.

(*b*) The mortgage *ad valorem* duty is, of course, payable for this sum. See 55 Geo. III. c. 184, sched. part 1, MORTGAGE.

redeemable until payment, as well of the said sum of pounds and the interest thereof, as of the said sum of pounds and the interest thereof; (c) *And* that he, the said [*mortgagor*], hath not, at any time since the date and execution of the said within-written indenture, sold, disposed of, conveyed, mortgaged, charged, or in any manner incumbered, the said manor or lordship, messuages or tenements, farm lands, tithes, hereditaments, and premises comprised in and conveyed by the same indenture, and their rights, members, and appurtenances, or any of them, or any part thereof respectively; *And* that he, the said [*mortgagor*], and his heirs, and all other persons whomsoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, out of, or upon the said manor or lordship, messuages or tenements, farm lands, tithes, hereditaments, and premises, comprised in and conveyed by the said within-written indenture as aforesaid, or any of them, or any part thereof respectively, shall and will, at the request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the expense of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause to be made, done, and executed, all such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for the better and more perfectly and absolutely subjecting and charging the same manor or lordship, messuages or tenements, farm, lands, tithes, hereditaments, and premises, and their rights, members, and appurtenances, with and to

FURTHER CHARGE BY DEED INDORSED.

and that since the mortgage the mortgagor has done no act to incumber.

And for further assurances.

---

(c) If the mortgage-deed contains a power of sale, add,—

"And that the power of sale given to and vested in the said [*mortgagee*], his heirs and assigns, in and by the said within-written indenture, shall and may be exercised as well for the recovery or raising of the said sum of pounds and the interest thereof, or any part thereof, as for the recovery or raising of the said sum of pounds, and the interest thereof, or any part thereof."

And that the power of sale in the mortgagee may be exercised for raising the sum hereby secured.

FURTHER CHARGE BY DEED INDORSED.

the payment of the said sum of pounds and interest, hereby secured as aforesaid, and for vesting the same manor or lordship, messuages or tenements, farm lands, tithes, hereditaments, and premises, and their rights, members, and appurtenances, in the said [*mortgagee*], his heirs and assigns, in manner and for the purposes in the said within-written indenture and these presents mentioned and expressed, as by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required. IN WITNESS, &c.

---

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

## ASSIGNMENT *of a* TERM *of Years In Trust, to* ATTEND *the Inheritance of an Estate in* MORTGAGE; *and* SURRENDER *of* THREE *other* TERMS *in different* MOIETIES *of the same Estate,* TO THE INTENT *that the same may become* MERGED *in the* FEE. (*a*)

THIS INDENTURE, made the day of 182 , between [*assignor of the first-mentioned term*], of, &c., of the first part; [*assignor of the second and third-mentioned terms*], of, &c., of the second part; [*assignor of the fourth-mentioned term*], of, &c., of the third part; [*mortgagor*], of, &c., of the fourth part; [*mortgagee*], of &c., of the fifth part; and [*assignee of the first-mentioned term*], of, &c., of the sixth part. WHEREAS, by indentures of lease and release, bearing date respectively the 30th and 31st days of December, 1807, the release being made, or expressed to be made, between [A. B.], therein

Parties.

Recites indentures of lease and release, whereby the premises were conveyed to the father of mortgagor in fee.

(*a*) For a form of Assignment of several terms of years to different trustees, to attend the inheritance of an estate in mortgage, see the next precedent but one.

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

described of the first part; [C. D.], therein described of the second part; [E. F.], therein described of the third part; and [*father of mortgagor*], therein described, of the fourth part; ALL THAT manor or lordship, &c. [*parcels*], and the rights, members, and appurtenances to the same manor or lordship, messuages or tenements, farm lands, hereditaments, and premises, belonging, or in anywise appertaining, were (for the consideration in the said indenture of release mentioned) conveyed and assured unto and to the use of the said [*father of mortgagor*], his heirs and assigns, for ever. AND WHEREAS, by an indenture of assignment, bearing date the said 31st day of December, 1807, and made, or expressed to be made, between [X. Y.], therein described of the first part; [Y. Z.], therein described of the second part; the said [E. F.], of the third part; the said [*father of mortgagor*], of the fourth part; the said [*assignor of the first-mentioned term*], of the fifth part; and the said [*assignor of the second and third-mentioned terms*], of the sixth part; the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in, and conveyed by, the said hereinbefore-recited indentures, as aforesaid, and their rights, members, and appurtenances, were (for the considerations in the said indenture now in recital mentioned) assigned unto the said [*assignor of the first-mentioned term*], his executors, administrators, and assigns, for all the then residue and remainder of a term of five hundred years, created therein by an indenture of release and settlement, bearing date the 6th day of June, 1786, in the said indenture now in recital particularly mentioned, *In trust*, nevertheless, for the said [*father of mortgagor*], his heirs and assigns, and to attend the inheritance; *And* by the said indenture now in recital, one undivided moiety, or half-part or share, of and in the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures as aforesaid, and their rights, members, and appurtenances, was (for the considerations in the said indenture now in recital mentioned) assigned unto the said [*assignor of the second and third-mentioned terms*], his executors, admi-

An indenture of assignment, whereby the premises were assigned to assignor of the first-mentioned term for the residue of a term of five hundred years, created in 1786, in trust for the father of mortgagor, and to attend.

That, by the same indenture, one moiety or half part of the premises were assigned to assignor of the second and third-mentioned terms, for the residue of a term of five hundred years, created

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

nistrators, and assigns, for all the then residue and remainder of a term of five hundred years, created therein by an indenture of release and settlement bearing date the 7th day of February, 1790, in the said indenture now in recital particularly mentioned, *In trust*, nevertheless, for the said [*father of mortgagor*], his heirs and assigns, and to attend the inheritance; *And* by the said indenture now in recital, the other undivided moiety, or half-part or share of and in the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures, as aforesaid, and their rights, members, and appurtenances, was (for the considerations in the said indenture now in recital mentioned) assigned unto the said [*assignor of the second and third-mentioned terms*], his executors, administrators, and assigns, for all the then residue and remainder of a term of six hundred years, created therein by an indenture of release bearing date the 8th day of June, 1794, in the said indenture now in recital particularly mentioned, *In trust*, nevertheless, for the said [*father of mortgagor*], his heirs and assigns, and to attend the inheritance; *And* by the said indenture now in recital it was declared, that [G. H.], of , in the county of (in whom one undivided moiety or equal half-part or share of and in the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures as aforesaid, and their rights, members, and appurtenances, was then vested for the residue of a term of five hundred years, created therein by an indenture bearing date the 10th day of November, 1798, in the said indenture now in recital particularly mentioned, *In trust* to attend the inheritance), his executors, administrators, and assigns, should stand and be possessed of the same undivided moiety or equal half-part or share, and premises, during the then residue and remainder of the said last-mentioned term of five hundred years, *In trust* for the said [*father of mortgagor*], his heirs and assigns, and to attend the inheritance. And whereas the said [*father of mortgagor*] departed this life on or about the day of

in 1790, in trust for the father of mortgagor, and to attend;

and the other moiety or half part was assigned to assignor of the second and third-mentioned terms, for the residue of a term of six hundred years, created in 1794, in trust for the father of mortgagor, and to attend.

That, by the said indenture now in recital, it was declared that G. H. (in whom a moiety of the premises was then vested, for the residue of a term of five hundred years, created in 1798, in trust to attend) should stand possessed thereof, in trust for the father of mortgagor, and to attend.

That the father of mortgagor died intestate, leaving mortgagor his heir at law.

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

, intestate, leaving the said [*mortgagor*], his only son, his heir at law; *And* WHEREAS, by indentures of lease and release, bearing date respectively the and days of , and made, or expressed to be made, between the said [*mortgagor*], of the one part; and [M. N.], therein described, of the other part; the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures of lease and release, of the and days of , 182 , as aforesaid, and their rights, members, and appurtenances, were (in consideration of the sum of pounds, by the said [M. N.] to the said [*mortgagor*] paid, as in the said indenture of release now in recital is mentioned) conveyed by the said [*mortgagor*] unto and to the use of the said [M. N.], his heirs and assigns, but subject, nevertheless, to the dower, or right or title to dower therein, of [Jane ], the widow of the said [*father of mortgagor*], and to the proviso or condition in the said indenture of release now in recital contained for redemption of the said premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [M. N.], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of 4*l.* for 100*l.* by the year, on or at the days or times and in manner in the same indenture mentioned and appointed for the payment thereof. AND WHEREAS, by a deed-poll or instrument in writing, under the hand and seal of the said [Jane ], bearing date the day of now last past, and indorsed on the said lastly hereinbefore-recited indenture of release, the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures of lease and release as aforesaid, and their rights, members, and appurtenances, were (for the considerations in the said deed-poll mentioned) released and discharged by the said [Jane ] of and from all the dower, and right or title to dower, of her the said [Jane ], therein or thereto, and all actions, suits,

Indentures of lease and release, whereby the premises were conveyed by mortgagor to M. N. in fee, subject to the dower of the mother of mortgagor, and to a proviso for redemption, on payment of *l.*, and interest.

Deed-poll, whereby the mother of mortgagor releases the premises from her dower.

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

claims, and demands whatsoever, for or on account of the same, or in anywise relating thereto: And whereas, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, or expressed to be made, between the said [M. N.] of the first part; the said [*mortgagor*] of the second part; and the said [*mortgagee*] of the third part; the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures of lease and release, as aforesaid, and their rights, members, and appurtenances, have (in consideration of the sum of pounds to the said [M. N.], and the sum of pounds to the said [*mortgagor*], respectively paid by the said [*mortgagee*], as in the said indenture of release now in recital mentioned) been conveyed by the said [M. N.], and conveyed and confirmed by the said [*mortgagor*], unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, but subject, nevertheless, to a proviso or agreement in the said last-mentioned indenture contained, for redemption of the said premises, on payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of 4*l.* for 100*l.* by the year, on the day of now next ensuing. And whereas the said [G. H.] departed this life on or about the day of , intestate, *And* on or about the day of , administration of his goods, rights, and credits, was granted to the said [*assignor of the fourth-mentioned term*], by the Court of ; And whereas, upon the execution of the said lastly hereinbefore-recited indentures, it was agreed that the said [*assignor of the first-mentioned term*], [*assignor of the second and third-mentioned terms*], and [*assignor of the fourth-mentioned term*], should make and execute the assignments, and enter into the covenants hereinafter on their respective parts contained. Now this indenture witnesseth, that in pursuance and part-performance of the said agreement,

Indentures of lease and release, of even date, whereby the premises were discharged from the money secured to M. N., and conveyed by him and the mortgagor to the mortgagee in fee; but subject to redemption, on payment of *l.*, and interest.

That G. H. died intestate, and that administration of his effects was granted to assignor of the fourth-mentioned term, by the Court of

And that, upon the execution of the last-recited indenture, it was agreed that the assignors of the terms should execute the assignments, and enter into the

ASSIGNMENT OF TERMS TO ATTEND MORTGAGE.

and in consideration of the premises, and of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*assignee of the first-mentioned term*] to the said *assignor of the first-mentioned term*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged): HE, the said [*assignor of the first-mentioned term*], according to his estate, right, and interest, and so far as he can or may at law or in equity, but not further or otherwise, and at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*mortgagee*] (testified by their respectively being parties to and sealing and delivering these presents), *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [*assignee of the first-mentioned term*], his executors, administrators, and assigns, ALL THAT and those (*b*) the said manor or lordship, messuages or tene-

covenants hereinafter on their respective parts contained.

First witnessing part.

The assignor of the first-mentioned term assigns the premises comprised in that term to the assignee of the same term, in trust for the mortgagee, and to attend the inheritance.

(*b*) As to the mode of describing parcels in assignments of terms of years, see Vol. IV. p. 190, n. (*d*). In the majority of assignments of terms of years, there is a variance between the reference to the parcels in the recitals, and the description of them in the operative part of the deed; for many gentlemen, who are very particular in requiring that a trustee of a term should only assign the premises as—

As to parcels in assignments of terms.

"such of the premises comprised in the term as have been conveyed by the lastly hereinbefore-recited indentures of lease and release"—

or by some other like description, will not alter a positive recital in the same deed that the premises comprised in the indentures of lease and release, were demised by a certain indenture to the assignor for a specified number of years, or were assigned to him for the residue of a term of years created therein by an indenture of a given date. If practicable, it should be ascertained what premises are comprised in the term, and are intended to be assigned; and when this is known, the fact should be stated clearly and positively in the recitals, and also in the body of the deed. When the real fact is not known, and it is necessary to assign the premises by a qualified description, similar to the one above mentioned, it seems proper that the statements in the recitals on this head should be also qualified. Indeed, it would be often better, under such circumstances, to merge the term, and thereby put an end to all questions which might otherwise arise on the assignment.

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

ments, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures of lease and release, as aforesaid, and so assigned to the said [*assignor of the first-mentioned term*] by the said recited indenture of assignment of the 31st day of December, 1807, as hereinbefore is mentioned, with their and every of their rights, members, and appurtenances, *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*assignor of the first-mentioned term*], in, to, out of, or upon the same hereditaments and premises, or any of them, or any part thereof, TO HAVE AND TO HOLD the said manor or lordship, messuages or tenements, farm lands, hereditaments, and all and singular other the premises hereby firstly assigned, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*assignee of the first-mentioned term*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, created by the said hereinbefore-mentioned indenture of the 6th day of June, 1786, *In trust*, nevertheless, for the said [*mortgagee*], his heirs and assigns, and to assign and dispose of the said term as he or they shall from time to time direct or appoint; (*c*) *And*, in the meantime, *In trust* to permit

---

(*c*) In assignments of terms of years for the benefit of a mortgagee, the following trusts are very common:—

Trusts in assignments of terms for a mortgage.

"*In trust* for the said [*mortgagee*], his executors, administrators, and assigns, for better securing to him and them the said sum of pounds, and the interest thereof; *And* subject thereto, *In trust* for the said [*mortgagor*], his heirs and assigns," &c. (*as above.*)

"*In trust* for the said [*mortgagee*], his heirs, executors, administrators, or assigns, and to assign and dispose of the same term, as he or they shall from time to time order or direct; but subject, nevertheless, to such right, title, or equity of redemption, as shall or may be subsisting in the same hereditaments and premises, under

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

the same term to wait upon and attend the reversion, freehold, and inheritance of the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereby firstly assigned, or intended so to be, and their rights, members, and appurtenances, and to protect the same from all mesne incumbrances, if any such there be. AND the said [*assignor of the first-mentioned term*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT and declare, with and to the said [*assignee of the first-mentioned term*], his executors, administrators, and assigns, that he, the said [*assignor of the first-mentioned term*], hath not, at any time heretofore, made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereby firstly assigned, or intended so to be, and their rights, members, and appurtenances, or any of them, or any part thereof, or the said term of five hundred years, created by the said indenture of the 6th of June, 1786, as aforesaid, are, is, can, shall, or may be in anywise impeached, charged, assigned, surrendered, affected, or incumbered. AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance and further performance of the said agreement, and in consideration of the premises, and of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*mortgagee*] to each of them, the said [*assignor of the second and third-mentioned terms*], and [*assignor of the fourth-mentioned term*], paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), THEY, the said [*assignor of the second and third-mentioned terms*], and [*assignor of the fourth-mentioned term*], for the purpose of merging and extinguishing, in the reversion and inheritance of the hereditaments and premises hereinbefore and hereinafter mentioned, the said several terms of five hundred years, six hundred

Assignor of the first-mentioned term covenants that he has done no act to incumber.

Second witnessing part.

The assignors of the second, third, and fourth-mentioned terms, surrender the same terms to the mortgagee, to merge in the fee.

---

or by virtue of the proviso, condition, or agreement hereinbefore contained."

ASSIGNMENT OF TERMS TO ATTEND A MORTGAGE.

years, and five hundred years respectively, created by the said hereinbefore-mentioned indentures of the 7th day of February, 1790, the 8th day of June, 1794, and the 10th day of November, 1798, so far as the same terms relate to or affect the same hereditaments and premises, and so far as the said [*assignor of the second and third-mentioned terms*], and [*assignor of the fourth-mentioned term*], respectively, can or may, but not further or otherwise, and at the request and by the direction of the said [*mortgagor*], and with the privity and upon the acceptance of the said [*mortgagee*] (testified by their respectively executing these presents), ***Have,*** and each of them ***Hath,*** bargained, sold, assigned, and surrendered, ***And*** by these presents ***Do,*** and each of them ***Doth,*** bargain, sell, assign, and surrender unto the said [*mortgagee*], and his heirs, ALL THAT and those the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures of lease and release as aforesaid, with their and every of their rights, members, and appurtenances; ***And*** all the estate, &c. (as *ante*, p. 298), ***To the end and intent*** that the said several terms of five hundred years, six hundred years, and five hundred years respectively, created in the said manor or lordship, messuages or tenements, farm lands, hereditaments, and premises, hereby lastly assigned and surrendered, or intended so to be, and their rights, members, and appurtenances, by the said indentures of the 7th of February, 1790, the 8th of June, 1794, and the 10th day of November, 1798, as hereinbefore is mentioned, may from henceforth be merged and extinguished in the reversion, freehold, and inheritance of the same manor or lordship, messuages or tenements, farm lands, hereditaments, and premises, and their rights, members, and appurtenances. (***Covenant against incumbrances by the assignors.***) IN WITNESS, &c.

The assignors covenant that they have done no act to incumber.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

APPOINTMENT *and* RELEASE *in* FEE *to* TRUSTEES, *for securing, by way of* MORTGAGE, *the sum of pounds, and interest, with* POWER *of* SALE: *Also* POWER *of* LEASING, *and* PROVISIONS *for accepting a* LESS *rate of interest, and allowing the money to* REMAIN *on the security for* SEVEN *years, if the interest should be regularly paid, and for* INSURANCE *against damage by* FIRE.

THIS INDENTURE, made the day of 182 , between [*mortgagor*], of, &c. of the first part; [*trustee to bar dower*], of, &c. of the second part; [*mortgagee*], of, &c. of the third part; and [*trustees for mortgagee*], of, &c. of the fourth part: (*a*) WHEREAS, by in-

Parties.

Recite the conveyance to the mortgagor;

(*a*) Powers of sale, in mortgage-deeds, were formerly not common; but, in consequence of the delay and great expense attendant on getting the equity of redemption foreclosed, and the necessity of afterwards proceeding to a sale of the property mortgaged, in order to realize the money advanced on the security, such powers have of late become very generally inserted in mortgages: more particularly where the mortgagor may be considered as in comparatively indigent circumstances, or the estate intended to be mortgaged is of uncertain or doubtful value. The most usual mode is, to vest the estate, and also the power of sale, in the mortgagee himself, as there may be difficulty in inducing the trustee or trustees, if any be appointed, to act; but a mortgagor will not unfrequently refuse to give to the intended mortgagee an uncontrolled power over his estate, and will stipulate for the appointment of trustees on whom he can depend, as a security against an improper or oppressive exercise of the power of sale, and will also often insist on the power of appointing new trustees, in the event of the death, or unwillingness or incapacity to act, of the trustees first appointed, being so reserved as to keep the estate always vested in one trustee of his own nomination, who will be in his interest. This latter provision is, however, generally resisted on the part of a mortgagee, as it may be the occasion of a troublesome and litigious person being introduced into the trust by the mortgagor.

As to the insertion of powers of sale in mortgages, and vesting such powers in trustees.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

dentures of lease and release, bearing date respectively the and days of the release being made or expressed to be made, between [X. Y.], of, &c. of the first part; the said [*mortgagor*], of the second part; and the said [*trustee to bar dower*], of the third part; in consideration of the sum of pounds, to the said [X. Y.], paid by the said [*mortgagor*], the messuages or tenements, lands, and hereditaments, hereinafter particularly mentioned and described, and intended to be hereby appointed and released, and their appurtenances, were (amongst and together with other hereditaments) conveyed and assured by the said [X. Y.], *To such uses*, upon such trusts, for such intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*mortgagor*] should, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered, in the presence of, and attested by two or more credible witnesses, from time to time, direct, limit, or appoint; *And* in default of, and until such direction, limitation, or appointment, and subject thereto, *To the use of* the said [*mortgagor*], and his assigns, during his life, without impeachment of waste, with a limitation, *To the use of* the said [*trustee to bar dower*], and his heirs, during the life of the said [*mortgagor*], *In trust* for him, the said [*mortgagor*], and his assigns, with remainder *To the use of* the said [*mortgagor*], his heirs and assigns, for ever.

and that the mortgagee has agreed to lend him the sum of *l.*, on having it secured, with interest, by a mortgage of the premises.

And whereas the said [*mortgagor*], having occasion for the sum of , hath applied to the said [*mortgagee*] to advance and lend him the same, which he hath consented and agreed to do, on having the repayment thereof, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, secured by a mortgage, in manner hereinafter mentioned, of the said messuages or tenements, lands, and hereditaments hereinafter particularly mentioned and described, and intended to be hereby appointed and released, and their appurtenances, with such power of sale, and other powers, as are hereinafter contained.

First witnessing part.

Now, this indenture witnesseth, that, in pursuance and part-performance of the said agreement, and in consideration of the sum of pounds, of lawful money of Great Bri-

In consideration of *l.* to the mort-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

tain and Ireland, to the said [*mortgagor*], in hand, well and truly paid by the said [*mortgagee*], at or immediately before the sealing and delivering of these presents (the receipt of which said sum of pounds the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said [*mortgagee*], his heirs, appointees, executors, administrators, and assigns, for ever, by these presents). HE, the said [*mortgagor*], pursuant to and by force and virtue, and in exercise and execution of the power or authority to him for this purpose given or limited in and by the said hereinbefore in part recited indenture of release, and of every or any other power or authority whatever, in anywise enabling him in this behalf, and at the request and by the direction, and upon the nomination of the said [*mortgagee*], (testified by his being a party to, and sealing and delivering these presents) ***Doth***, by this present deed or writing, by him sealed and delivered, in the presence of the two credible persons, whose names are intended to be hereupon indorsed, as witnesses, attesting the sealing and delivery of these presents, by him, the said [*mortgagor*], direct, limit, and appoint, That the said messuages or tenements, lands, and other hereditaments, hereinafter particularly mentioned and described, and intended to be hereby appointed and released, and their appurtenances, shall henceforth go, remain, and be ***To the use of*** the said [***trustees for mortgagee***], their heirs and assigns, for ever, ***In trust*** for the said [*mortgagee*], his heirs, executors, administrators, and assigns. ***But***, nevertheless, with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed or contained, of or concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of pounds, so paid to the said [*mortgagor*] by the said [*mortgagee*], as hereinbefore is mentioned, ***And*** also in consideration of the sum of 10*s.* of like lawful money, by the said [***trustees for mortgagee***], to each of them, the said [***trustee to bar dower***] and [*mortgagor*], paid at or immediately before the sealing and delivery of these presents (the receipt

gagor, paid by the mortgagee, the mortgagor, in pursuance of his power, appoints the premises.

To the use of trustees for the mortgagee in fee, but subject to the powers, &c. hereinafter contained.

Second witnessing part.

For the aforesaid consideration, the trustee, to bar dower, conveys, and the mortgagor conveys and confirms to the trustees for the mortgagee.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

whereof is hereby acknowledged), He, the said [*trustee to bar dower*], at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*mortgagee*] (testified by their respectively being parties to, and sealing and delivering these presents), *Hath* bargained, sold, and released, *And* by these presents *Doth* bargain, sell, and release, *And* the said [*mortgagor*] *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm, unto the said [*trustees for mortgagee*], (in their actual possession, &c.) and their heirs, All that, &c. [*Parcels*], together with, &c. *(general words) And* the reversion, &c. *And* all the estate, &c. To have and to hold the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or expressed and intended so to be, and their appurtenances, unto the said [*trustees for mortgagee*], and their heirs, *to the use of* them, the said [*trustees for mortgagee*], their heirs and assigns, for ever, *In trust* for the said [*mortgagee*], his heirs, executors, administrators, and assigns; *But* nevertheless with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained, of or concerning the same *(covenant from the trustee to bar dower, that he has done no act to incumber).* Provided always, and it is hereby agreed and declared, between and by the said parties hereto, that if the said [*mortgagor*] *(shall pay to the mortgagee the sum of pounds, and interest, &c. at, &c. the trustees shall reconvey to the mortgagor,* as *ante,* p. 281-2. (*b*).)

the premises aforesaid.

Habendum to the trustees for the mortgagee in fee, but subject to the powers hereinafter contained.

Covenant that trustee to bar dower has not incumbered.

Proviso for redemption.

(*b*) Provisions are often inserted for making the mortgagee accept a less rate of interest, and also allow the money to remain on the security for a given number of years, in case the interest should be regularly paid. These provisions are sometimes introduced in the following forms:—

Provisions for accepting a less rate of interest, and for allowing the money to remain on the security for three years, if the interest should be regularly paid.

"Provided always, and the said [*mortgagee*] doth hereby covenant, promise, and agree with the said [*mortgagor*], his heirs, executors, administrators, and assigns, and the true intent and meaning of these presents, nevertheless, is, that if the said [*mortgagor*], his heirs, execu-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

AND the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators *(covenant with the mortgagee for payment of the said sum of pounds, and interest, at the time mentioned in the pro-*

Covenant from the mortgagor for payment of the money and interest.

tors, administrators, or assigns, do and shall, on the day of next ensuing, and on every day of , and day of , which will be in the years 182 , 182 , and 182 , or within one calendar month next after the said days respectively, well and truly pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, interest for the said sum of pounds, after the rate of 4*l.* for 100*l.* for a year; *Then*, and in such case, the said [*mortgagee*], his executors, administrators, or assigns, shall not, before the said day of , 182 , call in or compel payment of the said sum of pounds, or any part thereof, *and* shall and will accept and take interest for the said sum of pounds, after the rate of 4*l.* for 100*l.* for a year, for every half-year for which such interest shall be paid to him or them, on the day or within the time lastly hereinbefore mentioned; PROVIDED ALSO, and it is hereby further agreed and declared, between and by the said [*mortgagor*] and [*mortgagee*], and the true intent and meaning of them, and of these presents, is, that if, at any time or times, whilst the said sum of pounds, or any part thereof, shall remain and continue upon this present security, the interest for the said sum of pounds, or so much thereof as for the time being shall remain and continue upon this present security, shall be in arrear and unpaid for one calendar month and upwards, next after the day or time whereon half a year's interest shall from time to time become due and payable, and the interest being so in arrear and unpaid, the said [*mortgagee*], his executors, administrators, or assigns, shall, nevertheless, neglect or forbear to call in or compel payment of the said sum of pounds, or so much thereof as shall be then due, or shall accept interest for the same; *Then* and in such case he, the said [*mortgagee*], his executors, administrators, or as-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

*viso for redemption*, as *ante*, p. 282.) AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees for mortgagee*], their heirs

Usual covenants.

signs, shall not, by such neglect or forbearance, or by such acceptance of interest as aforesaid, be precluded or prevented from demanding, recovering, and receiving, from the person or persons liable to pay the same, at any time before the said day of , 182 , payment of the said sum of pounds, or so much thereof as shall be then due, and the interest thereof, respectively, *or* from using, before the said day of , 182 , any powers or remedies for recovering or enforcing payment of the said sum of pounds, or so much thereof as shall be then due, or any part thereof, and the interest thereof, or any part thereof, *or* from filing a bill for the foreclosure of the equity of redemption subsisting in the hereditaments and premises hereby appointed and released, or intended so to be, or any part thereof; PROVIDED ALSO, and it is hereby further agreed and declared, between, &c. that if, at any time or times, whilst the said sum of pounds, or any part thereof, shall remain and continue upon this present security, the interest for the said sum of pounds, or so much thereof as shall for the time being remain due, shall be in arrear and unpaid for one calendar month and upwards next after the day or time whereon half a year's interest shall from time to time become due and payable, and the interest being so in arrear and unpaid, the said [*mortgagee*], his executors, administrators, or assigns, shall, nevertheless, receive or take, in respect of such arrear of interest, any less sum than after the rate of 5*l.* for 100*l.* for a year; *And* if it shall happen that the interest for the said sum of pounds, or any part thereof, shall, at any subsequent time or times, be in arrear and unpaid, for the space of one calendar month next after the day or time whereon half a year's interest shall from time to time become due and payable, *Then* and in such case the said [*mortgagee*], his executors, adminis-

and assigns, in manner following (that is to say), that he, the said [*mortgagor*], &c. *hath good right to appoint, release, and convey the premises to the trustees for mortgagee; that, in case of default in payment of the money*

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

For title.

---

trators, or assigns, shall not, by reason of his or their having, at any time or times preceding, accepted or taken interest, after any less rate than 5*l.* for 100*l.* for a year, for the said sum of pounds, or any part thereof, be precluded or prevented from demanding, recovering, and receiving, of and from the person or persons, for the time being, liable to the payment of the said sum of pounds, or so much thereof as shall, for the time being, remain due, interest for the said sum of pounds, or so much thereof as for the time being shall remain due, after the rate of 5*l.* for 100*l.* for a year, for any such half-year for which such last-mentioned interest shall be so unpaid to the said [*mortgagee*], his executors, administrators, or assigns, for the space of one calendar month next after the day or time whereon such half-year's interest shall, from time to time, become due and payable; PROVIDED ALWAYS, and it is hereby also agreed and declared, between and by the said [*mortgagor*] and [*mortgagee*], and the true intent and meaning of them, and of these presents, is, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall not, upon the said day of next ensuing the date of these presents, well and truly pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds, with interest for the same, in manner aforesaid, and according to the true intent and meaning of these presents, *Then* and in such case it shall not be lawful for the said [*mortgagor*], his heirs, executors, administrators, or assigns, at any time before the said day of 182 , to oblige or compel the said [*mortgagee*], his executors, administrators, or assigns, to receive the said principal sum of pounds, or any part thereof; *But* the same sum of pounds, and every part thereof, shall, unless the said [*mortgagee*], his executors, administrators, or assigns, shall, on such default in pay-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

*and interest, the trustees for mortgagee may enter and quietly enjoy, for freedom from incumbrances; and for further assurance,* see *ante,* p. 283.) PROVIDED ALWAYS,(*c*) and it is hereby agreed and declared, between and by the said parties hereto, that until default shall be made in payment of the said sum of pounds, or the interest thereof, or of some part thereof, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, the said [*mortgagor*], his heirs or assigns, shall and may, &c. (*quietly enjoy, as against the trustees, and all persons claiming under them,* see *ante,* p. 286.) PROVIDED ALWAYS, and

Proviso for quiet enjoyment by the mortgagor, until default.

---

ment of the interest thereof, as aforesaid, previously call in and receive payment of the same, continue and remain on the security of the hereditaments and premises hereby appointed and released, or intended so to be, and of these presents, until the said day of , 182 ."

Distinction in regard to paying higher or lower rate of interest.

It seems proper, in this place, to notice a distinction which appears established, by the cases on the subject, between the reservation of the higher rate of interest, with a provision for the acceptance of a lower rate in lieu thereof, on punctual payment, and the reservation of the lower rate of interest, with an agreement to increase it, in case default should be made in payment of the interest reserved at the time appointed: namely, that, in the former case, the provision is considered to be a *condition,* which must be complied with, or the larger rate of interest will be payable, without any relief in equity, while, in the latter case, the agreement to increase the rate of interest is treated only in the nature of a *penalty,* and will consequently be relieved against it. To avoid all doubt, it seems advisable, in *both* cases, expressly to declare, that the higher rate of interest shall be payable, in case the lower rate is not duly and punctually paid, and that no relief shall be given in equity, but that the excess of the higher rate of interest over the lower rate shall be deemed stated or liquidated damages. The principal cases on this point are, *Jory* v. *Cox,* Prac. Ch. 160; *Lady Holles* v. *Wyse,* 2 Vern. 289; *Nicholls* v. *Maynard,* 3 Atk. 519; *Seton* v. *Slade,* 7 Ves. 273; *Stanhope* v. *Manners,* 2 Ed. 197; *Brown* v. *Barkham,* 1 P. Wms. 653; *Halifax* v. *Higgens,* 2 Vern. 134.

The covenant for payment is often the last witnessing part.

(*c*) The covenant for payment of the money generally follows the clause for redemption; but it seems most accurate in cases like the present, to let all the *provisoes* precede the covenants for title; and to introduce the covenant for payment at the end of the deed, as a separate witnessing part.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

it is hereby further agreed and declared, between and by the parties to these presents, that if the said sum of pounds, or the interest thereof, or any part thereof, respectively, shall not be paid on or at the day or time in the aforesaid proviso or agreement mentioned and appointed for the payment of the same, and according to the true intent and meaning of these presents, and the said [*mortgagee*], his executors, administrators, or assigns, shall, at any time thereafter, by any writing, under his or their hand or hands (*d*), call in and require payment of the same, or of so much thereof, respectively, as shall then remain due, and the same shall not be paid within six calendar months next after the same shall be so called in or be required to be paid, as aforesaid, *Then* and in such case, and at any time thereafter, it shall and may be lawful to and for the said [*trustees*], or the survivor of them, or their, or his, or her heirs or assigns (*e*), at the request in writing of the said [*mortgagee*], his executors, administrators, or assigns, absolutely to sell and dispose of the said messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, either together or in parcels, and either by public auction or private contract (*f*), as

Power of sale, in case default is made in payment of the money, and interest, for six calendar months after the same are called in.

---

(*d*) The following words are sometimes introduced here:—

"to be given to the said [*mortgagor*], his heirs or assigns, or left at his or their usual or last known place or places of abode in England."

(*e*) The more usual and most accurate expression, where (as in this case) there is a power to appoint new trustees, is:—

"the said [*trustees*], or the survivor of them, or the heirs or assigns of such survivor."

(*f*) The following power of sale is taken from a mortgage-deed lately settled by Mr. Butler, and will be found useful:—

"PROVIDED ALWAYS, and it is hereby expressly agreed and declared between and by the said parties hereto, that if default shall be made in payment of the said sum of pounds and interest, or any part of the same, con-

Power of sale.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

they, he, or she shall think fit, and for such price or prices as to them, him, or her shall seem reasonable,

trary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, IT shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, at any time or times thereafter, on giving six calendar months' previous notice in writing to the said [*mortgagor*], his executors, administrators, or assigns, absolutely to sell and dispose of the said messuages or tenements, lands and hereditaments, hereby appointed and released, or intended so to be, and their appurtenances, or any of them, or any part thereof, either by public auction or private contract, in one lot or in separate parcels, or part thereof one way and part the other, for such price or prices as to the said [*mortgagee*], his executors, administrators, or assigns, shall seem reasonable, with power at any public auction of the said hereditaments and premises, or any of them, to buy in the same or any of them, and to vary or rescind any contract for the sale of the same, or any part thereof; and either by public auction or private contract, in one lot or in parcels, to re-sell all or any part of the hereditaments and premises which shall be so bought in, or of which the contract for sale shall be so rescinded, without responsibility for any loss to be occasioned thereby, and to convey and assure the said hereditaments and premises which shall be so absolutely sold, to the purchaser or respective purchasers thereof, or as he or they respectively shall direct; AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that all contracts which shall be entered into, and all conveyances and assurances which shall be executed by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or any of them, for the purpose of effecting the sale of the said hereditaments and premises, or any part thereof, shall be valid and effectual to all intents and purposes whatsoever, notwithstanding the said [*mortgagor*], his heirs, executors, administrators, or assigns, or any of them, or any person or persons claiming under or in trust

with liberty for them, him, or her to buy in the same, or any part thereof, at any auction, and to re-sell the same at some future auction, or by private contract, as they, he, or she shall think proper, without being answerable for any loss that may arise by reason of such re-sale, and also with full liberty and power for them or him or her to rescind and annul, or alter and vary, the terms and conditions of any contract which may be entered into for the sale of the said hereditaments and premises, or any part

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

---

for him, them, or any of them, shall not join therein or assent thereto; *And* that it shall not be incumbent on the respective purchasers of the said hereditaments and premises, or any part thereof, to ascertain or inquire whether, previously to such sale, such default in payment or such notice, as respectively aforesaid, shall actually have taken place or been given; *And* that the receipts in writing of the said [*mortgagee*], his heirs, executors, administrators, or assigns, for the money for which the said hereditaments and premises, or any part thereof, shall be sold, or for any other money payable to him or them by virtue of these presents, shall effectually discharge the person or persons respectively paying the same from all responsibility on account thereof, and all obligations of seeing to the application thereof; *And* that the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall, out of the money to be produced by the sale of the said hereditaments and premises, in the first place, defray the expenses of making out the title and completing such sale, and all other expenses consequent thereon or incident to this present indenture, or the execution of the powers and trusts thereof; and, in the next place, pay or retain to him, the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of pounds, or so much thereof as shall then remain due, and all interest on account of the same, and shall pay the surplus or residue of the said money (if any), to the said [*mortgagor*], his executors, administrators, or assigns, for his and their own use and benefit, as part of his or their personal estate."

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

thereof, without being answerable for any loss that may arise thereby; AND IT IS HEREBY AGREED AND DECLARED BETWEEN and by the said parties hereto, that, for the purposes aforesaid, it shall and may be lawful to and for the said [*trustees*], or the survivor of them, and their, or his or her, heirs or assigns, to enter into, make, and execute all such contracts, agreements, acts, deeds, conveyances, assurances, matters, and things, as to them, or him or her, shall seem reasonable or proper; *And* that all such contracts, agreements, acts, deeds, conveyances, assurances, matters, and things, as shall be so entered into, made, and executed by the said [*trustees*], or the survivor of them, or their, or his or her, heirs or assigns, as aforesaid, shall, whether the said [*mortgagor*], his heirs or assigns, shall or shall not join therein or assent thereto, be equally valid and effectual, and shall bind the said [*mortgagor*], his heirs and assigns, and all persons whomsoever claiming or to claim by, from, through, or under or in trust for him, them, or any of them; AND IT IS HEREBY AGREED AND DECLARED between the said parties hereto, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, or their, or his or her, heirs or assigns, for the monies which shall arise from such sale or sales as aforesaid, or for any rents or other monies payable to them, or him or her, by virtue of these presents, shall discharge the person or persons paying the same from being answerable or accountable for the misapplication or non-application of the monies in such receipt or receipts expressed or acknowledged to have been received, or from being in anywise obliged or concerned to see to the application thereof; *And* that no person or persons, to or with whom any sale or sales shall be made by virtue of these presents, shall be obliged to ascertain or inquire whether, at the time of such sale or sales, the principal monies and interest hereby secured, or any part thereof, were or was due and owing, or whether the same had or had not been previously called in, in manner hereinbefore mentioned, or whether such sale or sales was or were made at such request as is hereinbefore in that behalf mentioned, or otherwise to inquire into the necessity or propriety of the said sale or sales; AND IT IS HEREBY DE-

Power to the trustees to enter into contracts and execute conveyances, without the consent of the mortgagor.

Proviso for making the trustees' receipts sufficient discharges, and for making it unnecessary for purchasers to inquire into the necessity or propriety of the sales.

Declaration of trust of the monies to arise from sales.

CLARED AND AGREED between and by the said parties hereto, that in case the said messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, or any of them, or any part thereof, shall be sold under or by virtue of the power or authority hereinbefore contained, the said [*trustees*], or the survivor of them, or their, or his or her, heirs or assigns, shall, with and out of the monies which shall arise from such sale or sales, in the first place, pay, retain, and satisfy all the costs, charges, and expenses which they, or he or she, shall have incurred or sustained in or about the said sale or sales, or in perfecting and completing the same, or otherwise in relation thereunto; *And*, in the next place, pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds and interest hereby secured, or so much thereof respectively as shall remain due and owing, *And* shall pay the surplus or residue of the said monies (if any), unto the said [*mortgagor*], his heirs, executors, administrators, or assigns. (*g*) PROVIDED ALWAYS, *And* it is hereby agreed and declared between and by the said parties hereto, that whilst

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

Power of leasing if the pre-

---

(*g*) In a recent case, *Wright* v. *Rose*, 2 Sim. & Stu. 323, it was decided, that where a mortgage-deed contains a power of sale with a declaration that the surplus proceeds of the sale shall be paid to the mortgagor, his executors, or administrators, such surplus will nevertheless go to the heir, if the sale does not take place in the mortgagor's life-time; but if it does take place in his life-time, the surplus proceeds will go to his personal representatives. To remove any question on this head, the following clauses are frequently inserted, after the declaration of trust of the monies to arise from the sale:—

"PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the said parties hereto, that until the said messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, and their appurtenances, shall be sold, or contracted to be sold, under the power and provisions hereinbefore contained, the same shall be and continue of the nature of real estate, and not be or be deemed personal estate; PROVIDED ALWAYS, and it is hereby agreed and de-

Declaration that the mortgaged premises shall continue *real* estate till actually sold.

Proviso, that if the heredita-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

mises become untenanted.

any monies shall remain owing on the security of these presents, the said messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, or any part thereof, shall become untenanted, *Then*, and in every such case, the said [*trustees for mortgagee*] or the survivor of them, or their or his or her heirs or assigns, (if so required by the said [*mortgagee*], his executors, administrators, or assigns, by any writing under his or their hand or hands), do and shall, by deed, demise or lease the premises which shall so for the time being be untenanted, to any person or persons whomsoever, for any term or number of years not exceeding fourteen years, to take effect in possession, and not in reversion, at the best yearly rent that can be reasonably obtained for the same, without taking any fine, premium, or foregift for the making thereof, so that there be contained in every such demise or lease a covenant for payment of the rent thereby reserved, and a condition for re-entry on non-payment of the same rent, or any part thereof, for the space of twenty-one days next after the same shall become due, and so that the lessee or lessees therein named do execute a counterpart of the same demise or lease, and be not in any manner made dispunish-

---

ments shall become saleable, and the whole thereof shall not be sold, the trustees shall stand seised of the unsold hereditaments in trust for the mortgagor.

clared between and by the said parties hereto, that in case the said messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, and their appurtenances, shall become saleable under the power and provisions hereinbefore contained, and the whole thereof shall not be sold under the said power and provisions, *Then*, and in such case, the said [*trustees for mortgagee*], and the survivor of them, and the heirs and assigns of such survivor, shall stand and be seised of, and interested in such, and so many, or such part or parts, of the same messuages or tenements, lands, hereditaments, and premises, as shall not be so sold, and their appurtenances, *In trust* for the said [*mortgagor*], his heirs and assigns, and to convey and assure the same as he or they shall order or direct."

able for committing waste (*h*). PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that while any monies shall remain owing on the security of these presents, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will insure and keep insured the said messuages or tene-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

Provisions in regard to insurance against damage by fire.

---

(*h*) Powers of leasing in mortgage-deeds are not very common. The omission, however, is not always the result of due consideration. Without such a power, neither the mortgagor nor the mortgagee can grant a lease which will be binding on the other of them; and, of course, no person would knowingly take a lease from either of them alone. In most cases where a power of sale is given, it is not important that the mortgagee should have a power of leasing, as he will or can resort to his power of sale if the mortgagor should suffer the premises to remain long untenanted; but where it is part of the arrangement that the money shall remain some time on the mortgage security, a power of leasing should always be reserved to the mortgagee, if the premises are untenanted for more than two or three months at a time. It is generally advisable for a mortgagor to reserve to himself a power of leasing, as it saves the trouble and expense of obtaining the mortgagee's concurrence in a lease. The chief objections which a mortgagee can urge against reserving such a power are, that, in the event of a sale, the lease may be considered by a purchaser as an incumbrance, which it certainly would be by any party desirous of immediate possession of the premises; and that the mortgagor may, by means of such power, grant a lease without the knowledge of the mortgagee, and so interfere with the mortgagee's remedies of distress and ejectment. With respect to the first objection, it may be observed that the existence of a lease at a rack-rent usually enhances the value of property on a sale, as it is evidence of the real value of the estate sold, and many persons purchase lands for the purposes of investment of capital and to become landed proprietors, and not merely with a view to an actual occupation and enjoyment of the lands. The other difficulty is obviated by making the consent of the mortgagee necessary to the exercise of the power, or (which should always be done) requiring that the counterpart of the lease be delivered to the mortgagee within a specified number of days after its execution. After all, it must be admitted that, in general, the mutual interests of the mortgagor and mortgagee will secure their concurrence in any lease that it may be desirable to grant, and that a power of leasing may therefore be often properly omitted. In practice, mortgagors continually grant leases of their estates in mortgage, without giving to the lessees any notice of the mortgage, and consequently do not sustain any inconveni-

As to the reservation in a mortgage-deed of a power of leasing to the mortgagor.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

ments and other buildings hereby appointed and released, or intended so to be, from loss or damage by fire, in the names or name of the said [*trustees for mortgagee*], or the survivor of them, or their, or his or her, heirs or assigns, in the sum of pounds at the least, in the Royal Exchange Insurance Office, London, or in some other re-

---

As to the proper mode of conveying the estate where such a power is given.

ence from the non-reservation to themselves of a power of leasing; but such conduct is far from correct towards the lessees, and much to be condemned.

Where a power of leasing is intended to be reserved to the mortgagor, the estate to be mortgaged had better be conveyed to a third person (as releasee to uses), *to the use of* the mortgagee; and not to the mortgagee to the use of himself; for doubts are entertained by some conveyancers whether, in the latter case, the power is good and capable of being exercised, as in that case the mortgagee may be considered as taking the estate by the common law, and not by virtue of the Statute of Uses. See Sanders on Uses and Trusts, vol. I. p. 157, and Sugden on Powers, p. 121.

Form of a power of leasing reserved to the mortgagor.

Where a power of leasing is reserved to the mortgagor, it may be in the following form :—

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, or any part thereof, shall at any time or times hereafter, whilst any monies shall be owing on the security of these presents, become untenanted, *Then* and in every such case, it shall be lawful to and for the said [*mortgagor*], during his life, with the consent in writing of the said [*mortgagee*], his executors, administrators, or assigns, by any deed or deeds to be by him sealed and delivered, in the presence of, and attested by, one or more credible witness or witnesses, to limit or appoint, by way of demise or lease, all or any part of the said messuages or tenements, lands, hereditaments and premises, hereby appointed and released, or intended so to be, and their appurtenances, to any person or persons whomsoever, for any term or number of years not exceeding fourteen years, to take effect in possession, and not in reversion, or by way

putable office or offices in London or Westminster, for the insurance of buildings from loss or damage by fire; *And* shall and will, whenever thereunto requested, produce and deliver over unto the said [*trustees for mortgagee*], or the survivor of them, or their, or his or her, heirs or assigns, the policy or policies by which such insurance shall be

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

---

of future interest, so that in every such limitation or appointment by way of demise or lease, there be reserved the best or most improved yearly rent or rents that can be obtained for the same, to be payable during the continuance of the term thereby granted, and to be incident to the immediate reversion, without taking any fine, premium, or foregift for the making of such limitation or appointment, *And* so that in every such limitation or appointment there shall be contained a proviso or condition of re-entry, on non-payment of the rent thereby reserved, for the space of twenty-one days next after the times hereinbefore appointed for the payment thereof, *And* so that the lessee or lessees named in every such limitation or appointment, by way of demise or lease, his, her, or their executors, administrators, or assigns, be not thereby authorized to commit waste, or exempted from punishment for committing waste, *And* so that such lessee or lessees do execute a counterpart of such limitation or appointment, and cause the same to be delivered to the said [*mortgagee*], his executors, administrators, or assigns, or left at his, her, or their usual or last known place or places of abode, within seven days after the execution thereof."

In many forms the consent of the mortgagee is not required, and no reference is made to the premises being untenanted, and the clause runs thus:—

"Provided, &c. that it shall be lawful for the said [*mortgagor*], from time to time, and at all times hereafter, whilst he shall remain in the actual possession, or in the receipt of the rents and profits, of the said messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, and their appurte-

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

effected, and also the receipt or receipts, or other vouchers, given for the payment of the premium or premiums payable thereon; *And* that, if he or they shall at any time or times neglect or refuse so to do, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to insure and keep insured, in such names or name, and office or offices, as aforesaid, the same messuages or tenements and buildings, in any sum or sums of money he or they shall think fit, not exceeding in the whole the sum of pounds, and to advance or pay all such sum or sums of money as shall be necessary for that purpose; *And* that the said messuages or tenements, lands, hereditaments, and premises hereby appointed and released, or intended so to be, and their appurtenances, shall be and remain a security for, and the power of sale hereinbefore contained shall and may be exercised for the raising and paying of, as well all and every the sums and sum of money which shall be so from time to time advanced and paid as last aforesaid, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the time, or respective times, of advancing and paying the same, as the said sum of pounds, and interest, hereby secured as aforesaid; *And* that all such sum or sums of money, as shall be received or recovered under or by virtue of the policy or policies by which the said messuages or tenements and buildings shall be so insured as aforesaid, shall, at the option of the said [*mortgagee*], his executors, administrators, or assigns, be applied either in or towards substantially rebuilding, reinstating, and repairing the messuages or tenements and buildings which shall, for the time being, be destroyed or damaged by fire, or in or towards paying and

---

nances, whether before or after default shall have been made in payment of the principal monies and interest hereby secured, or intended so to be, or any part thereof, pursuant to the proviso or condition for redemption hereinbefore contained, by any deed, &c., to limit and appoint, &c., all or any part of the same messuages, &c., to any person," &c. (*as above.*)

satisfying the principal monies and interest, for the time being, due and owing on the security of these presents; *And* the surplus thereof (if any) shall, in either case, be paid to the said [*mortgagor*], his executors, administrators, or assigns. PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that if the said trustees hereby nominated and appointed, or to be nominated and appointed, as hereinafter is mentioned, or any of them, or their or any of their heirs, shall happen to die, or be desirous of being discharged of and from, or refuse or decline or become incapable to act, in the trusts hereby respectively in them reposed as aforesaid, before the said trust shall be fully executed and performed, *Then* and in such case, and when and so often as the same shall happen, (*i*) it shall and may be lawful to and for the [*mortgagee*], his executors, administrators, or assigns, by deed, to nominate and appoint any other person or persons to be a trustee or trustees, in the stead or place of the trustee or trustees so dying, or desiring to be discharged, or refusing, or declining, or becoming incapable to act, as aforesaid; *And* that, when and so often as any new trustee or trustees shall be so nominated and appointed, as aforesaid, the said trust estates, hereditaments, and

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

Clauses for changing trustees;

---

(*i*) Where it is agreed that the mortgagor shall appoint one trustee, and the mortgagee the other, the following should be introduced here:—

"If the trustee, so for the time being, dying, or desiring to be discharged, or refusing or declining, or becoming incapable to act, as aforesaid, shall be the said [*first-named trustee*], or his heirs, or any person or persons to be appointed in his or their place or stead, as hereinafter is mentioned, it shall be lawful for the said [*mortgagor*], his heirs or assigns, but if the trustee, so for the time being, dying, or desiring to be discharged, or refusing or declining, or becoming incapable to act, as aforesaid, shall be the said [*second-named trustee*], or his heirs, or any person or persons to be appointed in his or their place or stead, as hereinafter is mentioned, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, by deed," &c.

Variations where the mortgagor appoints one trustee, and the mortgagee the other.

APPOINTMENT AND RELEASE IN FEE, WITH POWER OF SALE, &c.

premises, shall be thereupon, with all convenient speed, conveyed and transferred, in such sort and manner, and so as that the same shall and may be legally and effectually vested in the person or persons so to be nominated and appointed, as aforesaid, either solely or jointly, with the then surviving or continuing trustee or trustees, as occasion shall require, upon the trusts hereinbefore declared concerning the same; *And* that every trustee who shall be so nominated and appointed as aforesaid, shall have all the powers and authorities of the trustee in whose place he is nominated and appointed; *And* that the trustees hereby nominated and appointed, or to be nominated and appointed, as hereinbefore is mentioned, their respective heirs, executors, and administrators, shall be accountable for such monies only as they respectively shall actually receive, and shall not be answerable the one for the other or others of them, or for signing receipts, for the sake of conformity, or for any involuntary loss or losses; *And* that it shall be lawful for them, out of the trust hereditaments and premises, or any monies which shall come to their hands, by virtue of these presents, to reimburse themselves, and allow their co-trustee or co-trustees all their costs and expenses, in executing the trusts hereby in them reposed, or in anywise in relation thereunto; AND IT IS HEREBY LASTLY AGREED AND DECLARED, between and by the said parties to these presents, that all and every persons and person in whom the said messuages or tenements, lands, hereditaments, and premises, hereby appointed and released, or intended so to be, or any of them, or any part of the same, are or is, or shall become, vested for any estate or interest whatsoever, or who have or hath, or shall have, any charge or lien on the same, shall stand and be seised and possessed of and interested in the same estates, interests, charges, or liens, respectively, *In trust* for the said [*trustees for mortgagee*], their heirs and assigns, as such trustees as aforesaid; but subject nevertheless to such right and equity of redemption as shall from time to time be subsisting, or capable of taking effect, in the same hereditaments and premises, under or by virtue of this present indenture. IN WITNESS, &c.

and for the indemnity of the trustees,

Declaration that all persons having any estate or interest, &c. in the mortgaged premises, shall stand seised thereof,

in trust for the mortgagee, but subject to redemption.

ASSIGNMENT OF THREE TERMS TO ATTEND THE INHERITANCE.

ASSIGNMENT *of* THREE *several* TERMS, *of Five hundred Years, One thousand Years, and Two thousand Years,* IN TRUST *to Attend a* MORTGAGE, *and to be Assigned as the* TRUSTEES *of the Mortgage Deed shall direct; And subject thereto, to* WAIT UPON *the* INHERITANCE.

THIS INDENTURE, made the day of , BETWEEN [*assignor of the term of five hundred years*], of, &c., of the first part; [*assignor of the term of one thousand years*], of, &c., of the second part; [*assignor of the term of two thousand years*], of, &c., of the third part; [*mortgagor*], of, &c., of the fourth part; [*mortgagee*], of, &c., of the fifth part; [*one trustee for mortgagee*], of, &c., and [*other trustee for mortgagee*], of, &c., of the sixth part; [*assignee of the term of five hundred years*], of, &c., of the seventh part; [*assignee of the term of one thousand years*], of, &c., of the eighth part; and [*assignee of the term of two thousand years*], of, &c., of the ninth part: (*a*) WHEREAS, by an indenture of appointment and release, bearing even date with these presents, and made, or expressed to be made, between the said [*mortgagor*], of the first part; [*trustee to bar dower*], therein described, of the second part; the said [*mortgagee*], of the third part; and the said [*trustees for mortgagee*], of the fourth part; and grounded on a lease for a year, bearing date the day next before the day of the date of the same indenture; ALL THAT, &c. [*parcels*], have (in consideration of the sum of pounds, of lawful money of Great Britain

Parties.

Recites the mortgage-deed of even date.

(*a*) In this case there was a distinct trustee for each term; but where there are several terms assigned, and all are kept on foot to attend the inheritance, it will in general be sufficient to have merely two trustees; each trustee being alternately made assignee of one of the different terms, according to the order in date of their creation. See 2 *Prest. Conv.* 127, 129; and *Scott* v. *Fenhaulet*, 1 *B. C. C.* 69. See, also, title PURCHASE-DEEDS, and General Index to Notes, TERMS.

Mode of assigning several terms.

ASSIGNMENT OF THREE TERMS TO ATTEND THE INHERITANCE.

and Ireland, to the said [*mortgagor*] by the said [*mortgagee*] paid, as in the said indenture of appointment and release is mentioned, and for the nominal considerations therein expressed) been appointed and released by the said [*mortgagor*], and released and conveyed by the said [*trustee to bar dower*], unto and to the use of the said [*trustees for mortgagee*], their heirs and assigns, for ever, *In trust* for the said [*mortgagee*], his heirs, executors, administrators, and assigns; *But* nevertheless under and subject to the provisoes, agreements, and declarations in the said indenture of appointment and release expressed and contained, concerning the same, and hereinafter in part mentioned; *And*, by the said indenture of appointment and release, it is provided, agreed, and declared, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, at or upon the Royal Exchange in the city of London, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 4*l.* 10*s.* for 100*l.* by the year, to be computed from the day of the date of the said indenture of appointment and release, on or at the days or times in the same indenture, and hereinafter mentioned, (that is to say): the sum of, &c. *(set out the manner of payment according to the proviso for redemption)*; *Then*, and in such case, they, the said [*trustees for mortgagee*], their heirs or assigns, shall and will, at the request and expense of the said [*mortgagor*], his heirs, executors, administrators, or assigns, reconvey and assure the said messuages or tenements, lands and hereditaments, thereby appointed and released, and their appurtenances, unto the said [*mortgagor*], his heirs and assigns, or as he or they shall in that behalf order or direct; *And*, by the said indenture of appointment and release, it is provided, agreed, and declared, that if default shall be made in payment of the said sum of pounds, or the interest thereof, or any part thereof respectively, contrary to the proviso or agreement for payment of the same thereinbefore contained, and hereinbefore mentioned, *And* the said [*mortgagee*], his executors, administrators,

The proviso for redemption and reconveyance.

And the power of sale.

ASSIGNMENT OF THREE TERMS TO ATTEND THE INHERITANCE.

or assigns, shall at any time thereafter, by writing under his or their hand or hands, to be given to the said [*mortgagor*], his heirs or assigns, or left at his or their usual or last known place or places of abode in England, call in and require payment of the same sum and interest, or such part thereof as shall then remain due, *And* the same shall not be paid within calendar months next after the same shall be so called in; *It* shall be lawful for the said [*trustees for mortgagee*], or the survivor of them, or the heirs or assigns of such survivor, at the request in writing of the said [*mortgagee*], his executors, administrators, or assigns, absolutely to sell and dispose of the said messuages or tenements, lands and hereditaments, thereby appointed and released, and their appurtenances, or any of them, either by public auction or private contract, as they or he shall think fit, for such price or prices as to them or him shall seem reasonable; *And* that the said [*trustees for mortgagee*], or the survivor of them, or the heirs or assigns of such survivor, shall and may, out of the monies which shall arise from any such sale or disposition, and which shall remain after discharging the costs and expenses of or attending the same, pay to the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds, and interest, secured by the said indenture, or so much thereof respectively as shall then remain due, *And* shall pay the surplus or residue of the said monies (if any) unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, or other the person or persons for the time being entitled thereto: AND WHEREAS the said messuages or tenements, lands and hereditaments, hereinbefore described, and so comprised in and appointed and released by the said hereinbefore recited indenture, as aforesaid, are subject to the respective residues and remainders of the several terms of years hereinafter mentioned, (that is to say): To the residue and remainder of a term of five hundred years, created by a certain indenture of demise bearing date the day of , and made between [A. B.], therein described, of the one part; and [C. D.], therein described, of the other part; and now vested in the said [*assignor of the same term*],

Also recites that the premises are subject to the respective residues of three several terms, created by, &c., and now vested in the assignors thereof, in trust for the mortgagor, and to attend.

ASSIGNMENT OF THREE TERMS TO ATTEND THE INHERITANCE.

as a trustee thereof, for the said [*mortgagor*], and to attend the inheritance; To the residue and remainder of a term of one thousand years, created by a certain indenture of release and settlement, bearing date the day of , and made, &c. (*state the parties*), and now vested in the said [*assignor of the same term*], as a trustee thereof, for the said [*mortgagor*], and to attend the inheritance; *And* to the residue and remainder of a term of two thousand years, created, &c., and now vested, &c. (*as above*): AND WHEREAS, upon and prior to the execution of the said hereinbefore-recited indenture of appointment and release, of even date herewith, it was agreed that the respective residues and remainders of the said severally hereinbefore-mentioned terms of five hundred years, one thousand years, and two thousand years, in the said messuages or tenements, lands and hereditaments, hereinbefore described, and so comprised in and appointed and released by the same indenture as aforesaid, and their appurtenances, should be assigned unto the said [*assignees of the same several terms*], their respective executors, administrators, and assigns, in the manner and upon the trusts hereinafter mentioned and declared. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement in this behalf, and in consideration of the premises, and of the sum of 10*s.* &c. (*nominal consideration from assignee of the term of five hundred years to the assignor thereof*), HE, the said [*assignor of the term of five hundred years*], at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*mortgagee*], and with the privity and approbation of the said [*trustees for the mortgagee*] (testified by their respectively being parties to and sealing and delivering these presents), *Hath* bargained, sold, assigned, transferred, and set over, *And*, &c., unto the said [*assignee of the term of five hundred years*], his executors, administrators, and assigns, (*b*) ALL and singular the said messuages or tenements, lands and hereditaments, hereinbefore described,

The agreement to assign the terms, upon the trusts and in manner hereinafter mentioned.

First witnessing part.

The assignor of the term of five hundred years assigns to the assignee thereof

the premises comprised in the mortgage.

(*b*) As to the proper description of Parcels in Assignments of Terms, see *ante*, p. 297; and Vol. IV. p. 90.

ASSIGNMENT OF THREE TERMS TO ATTEND THE INHERITANCE.

and so comprised in and appointed and released by the said hereinbefore-recited indenture of appointment and release, as aforesaid, and their appurtenances, or such and so many, and such part or parts thereof respectively, as were and are comprised in the said term of five hundred years; *And* all the estate, &c., To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments, and all and singular other the premises hereby firstly assigned, or intended so to be, and their appurtenances, unto the said [*assignee of the term of five hundred years*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, created therein as aforesaid, (c) *In trust*, nevertheless, for the said [*trustees for mortgagee*], their heirs and assigns, and to assign and dispose of the same term as they shall, consistently or in conformity with the trusts, powers, and provisions in the said hereinbefore-recited indenture of appointment and release declared and contained, from time to time order or direct; *And* in the meantime, *In trust* to permit the same term to wait upon and attend the reversion, freehold, and inheritance of the said messuages or tenements, lands, hereditaments, and premises, hereby firstly assigned, or intended so to be, and their appurtenances, and to protect the same from all mesne incumbrances, if any such there be. (*Covenant from the assignor of the term with the assignee of it, that he has done no act to incumber.*) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance, &c. (*Similar assignment from the assignor of the term of a thousand years, and a like covenant against incumbrances.*) AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance, &c. (*Like assignment and covenant from the assignor of the term of two thousand years.* IN WITNESS, &c.

Habendum to the assignee for the remainder of the term, in trust to assign it as the trustees of the mortgage-deed direct, and to attend the inheritance.

Second witnessing part.

Similar assignment of the term of one thousand years.

Third witnessing part.

Like assignment of the term of two thousand years.

(c) Where several terms are assigned, it is better in this place, in the assignment of each term, to say—

"upon and for the trusts, intents, and purposes hereinafter declared, concerning the same"—

and then, at the end of the last assignment, to introduce one general declaration of trust of all the terms. For other trusts, see *ante*, p. 298.

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

## APPOINTMENT *and* DEMISE *for a* TERM *of* YEARS *for securing, by way of* MORTGAGE, *the* RE-TRANSFER *of a Sum of* STOCK, *with a Sum equal to the* DIVIDENDS *in the mean time.* (*a*)

Parties.

Recites a feoffment and fine, whereby the premises were limited to such uses as the mortgagor should appoint;

THIS INDENTURE, made, &c. BETWEEN [*mortgagor*], of, &c., of the one part; (*b*) and [*mortgagee*], of, &c., of the other part: WHEREAS, by an indenture of feoffment (with livery of seisin thereon indorsed), bearing date the day of , and made, or expressed to be made, between [A. B.], of, &c., and [ ] his wife, of the first part; the said [*mortgagor*] of the second part; and [*trustee to bar dower*], of, &c., of the third part; and by a fine, "*sur conuzance de droit cum ceo, &c.*," duly acknowledged and levied by the said [A. B.] and [ ] his wife, before his majesty's justices of the Court of Common Pleas, at Westminster, in Term, in the year of the reign of his late majesty, pursuant to the covenant or agreement for that purpose in the said indenture contained, the messuages or tenements, hereditaments and premises, hereinafter described and intended to be hereby appointed and demised, with their appurtenances, were (for the considerations in the said indenture mentioned), conveyed and assured by the said [A. B.] and [ ] his

---

As to the propriety of making both an appointment and a demise.

(*a*) It is almost the universal practice to make a party claiming under a conveyance to the usual uses to bar dower with a previous power of appointment, first exercise his power; and then release, or demise by virtue of his interest. Where the power is duly exercised, there is no necessity for the release or demise; but, as a security against an informal exercise of the power, through the non-observance of some required ceremony, it is prudent to add it.

(*b*) The trustee to bar dower is sometimes made a party of the second part, and joins in the *demise;* but this is not necessary.

wife, unto the said [*mortgagor*] and his heirs, *To the use of* such person or persons, for such estate or estates, interest or interests, and for such intents and purposes, and in such manner, as the said [*mortgagor*], &c. (*should appoint, and in default thereof, to the usual uses to bar dower, see ante*, p. 302); And whereas the said [*mortgagee*] hath agreed, at the request of the said [*mortgagor*], to transfer and lend to him a sum of 2000*l.*, 3*l.* per cent. reduced Bank Annuities, (*c*) on having the re-transfer thereof, and

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

the agreement to lend the stock on having the re-transfer there-

(*c*) During the late war, the price of stock was so low as to render more than 5*l.* per cent. interest, and stock mortgages were consequently at that time very frequent. They are now very seldom seen, and scarcely ever prepared, except where a loan is made for a temporary purpose, and to accommodate some relation or friend. It was once considered doubtful whether a transaction of this kind was not *usurious*, as the dividends would, at the period alluded to, amount to more than 5*l.* per cent. on the money produced by the sale of the stock; but it is now well settled that such mortgages are valid, for the lender takes the risk of the rise and fall of the market. *Shepherd* v. *Johnson*, 2 East, 211. And it makes no difference whether the stock is actually transferred, or is sold and the net produce of the sale paid over. *Tate* v. *Wellings*, 3 T. R. 537. So, also, it is lawful for a debtor to agree to transfer to his creditor, at a given time, so much stock as the amount of the debt would have purchased on the day of the agreement, with dividends in the mean time. *Waddock* v. *Rumball*, 8 East, 304. It should, however, be noticed, that the party lending cannot reserve to himself an *option* to require the transfer of stock, or the payment of money. *Barnard* v. *Young*, 17 Ves. 44; *White* v. *Wright*, 3 B. & C. 273.

As to the validity of a stock mortgage.

In one case, *Forrest* v. *Elwes*, 4 Ves. 492, it was held to be not unlawful to stipulate for the re-transfer of the stock, and the payment in the mean time of 5*l.* per cent. on the amount of the value of the stock lent, or of the proceeds of the stock, if sold; and there seems no ground upon which the propriety of the decision can be questioned. Mortgages of this description are occasionally prepared; but the difference in the income can hardly be deemed a compensation for the trouble and extra expense which often attend a mortgage security, where the borrower is not a punctual and honourable man.

As to mortgage of stock, securing 5*l.* per cent. interest on the value.

In preparing such a mortgage, the following recital, covenant, and proviso, may be found useful:—

"And whereas, for the purpose of paying off the aforesaid mortgage, debt, or sum of 400*l.*, and to answer

Recital of agreement to lend 700*l.* by

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

the payment in the mean time of a sum of money equivalent to the dividends thereon, secured by the bond (*d*) and covenant of the said [*mortgagor*], and by a mortgage for a term of one thousand years, in manner hereinafter mentioned, of the said messuages or tenements, hereditaments and premises, comprised in and conveyed by the said hereinbefore-recited indenture and fine, as aforesaid, and their appurtenances; And whereas, in pursuance and part-performance of the said agreement, the said [*mortga-*

of secured, as after mentioned;

that the stock has been transferred in the name of the mortgagor accordingly;

---

sale of stock for that purpose, on having such stock and interest, or the value of it, secured as after mentioned.

his other occasions, the said [*mortgagor*] lately applied to the said [*mortgagee*] to lend him the sum of 700*l.* of lawful money of Great Britain and Ireland, which he, the said [*mortgagee*], agreed to do, by sale of a competent part of the 3*l.* per cent. reduced Bank Annuities then standing in the name of him, the said [*mortgagee*], in the books of the Governor and Company of the Bank of England, upon having the re-transfer of the 3*l.* per cent. Bank Annuities, which should be so sold, and the payment in the mean time of a sum of money equal to what the interest on the said sum of 700*l.*, to be raised by the sale of the said Bank Annuities, would amount to, after the rate of 5*l.* for 100*l.* by the year, secured at the times hereinafter expressed, by the covenant of," &c.

Covenant to transfer a sum of stock at the end of three years, and in the mean time to pay interest at 5 per cent. on the value of it when sold for the purpose of the loan.

"Now this indenture witnesseth, that, in consideration, &c. (*of the sum of* 700*l.*, *being the produce of* 764*l.* 3*l. per cent. reduced Bank Annuities, so sold as aforesaid*); He, the said [*mortgagee*], doth hereby, &c. (*covenant with the said mortgagee*), that he, the said [*mortgagor*], his heirs, executors, or administrators, or some or one of them, shall and will well and truly transfer, or cause to be transferred, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns, in the books of the said Governor and Company of the Bank of England, the sum of 754*l.* 3*l.* per cent. reduced Bank Annuities, on the day of , which will be in the year 18 ; *And* shall and will well and truly

---

Bond.

(*d*) As to the propriety of having an accompanying *bond*, see the Introductory Observations to this title.

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

*gee*] hath this day transferred, or caused to be transferred, into the name of the said [*mortgagor*], in the books of the Governor and Company of the Bank of England, the sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, as he, the said [*mortgagor*], doth hereby admit and acknowledge: AND WHEREAS, in pursuance and further performance of the said agreement, and in consideration of the said transfer so made by the said [*mortgagee*], as aforesaid, the said [*mortgagor*] hath, by his bond or obligation in writing,

that the mortgagor has given his bond of even date to secure the re-transfer of it, &c.;

---

pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, (as and for interest on the said sum of 700*l.*, which has been so raised and paid by him, the said [*mortgagee*], as aforesaid, after the rate of 5*l.* for 100*l.* by the year, from the day of the date of these presents, until the said sum of 754*l.* 3*l.* per cent. reduced Bank Annuities, shall be so transferred as hereinbefore is mentioned,) the sum of 105*l.* of lawful money of Great Britain and Ireland, on or at the days or times, and in the manner following (that is to say), the sum of 17*l.* 10*s.* (part thereof), on the day of now next ensuing; the sum of 17*l.* 10*s.* (further part thereof), on the day of , 18 , (*and so on, as to the other four half-yearly payments*); *And* shall and will make such transfer and payments as hereinbefore mentioned, without any deduction," &c.

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties hereto, that if the said [*mortgagor*], his heirs, executors, or administrators, shall and do well and truly transfer and pay, or cause to be transferred and paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the said sums of pounds, 3*l.* per cent. reduced Bank Annuities, and pounds of lawful money of Great Britain and Ireland, so respectively covenanted to be transferred and paid as aforesaid, on or at the days or times, and in manner hereinbefore in that behalf mentioned, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents; *Then*, and in such case," &c.

Short proviso for redemption, on transfer and payment of the stock and monies before covenanted to be transferred and paid.

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

bearing even date herewith, become bound to the said [*mortgagee*] in the sum of pounds, of lawful money of Great Britain and Ireland, subject to a condition thereunder written for making the same void, on transfer by the said [*mortgagor*], his heirs, executors, or administrators, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, of the sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, and on payment, by him or them, to the said [*mortgagee*], his executors, administrators, or assigns, of a sum or sums of money equal to the dividends thereon, on or at the days or times in the said condition, and hereafter mentioned, for the transfer and payment thereof respectively. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, so transferred by the said [*mortgagee*] into the name of the said [*mortgagor*], as hereinbefore is mentioned and recited (the transfer of which said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, in manner aforesaid, the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth acquit, release, and discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, for ever, by these presents.) HE, the said [*mortgagor*], pursuant to and by force (*e*) and virtue, and in exercise, &c. (*appoints, as ante,*

First witnessing part.

Themortgagor, in exercise of the power of

---

(*e*) When the estate conveyed is intended to be limited to different *uses*, it is usual, and most correct, to appoint and release by separate witnessing parts; but where the legal fee, or a term of years, is proposed to be vested in one person, as in this case, or in several persons jointly, the appointment and the release or demise may be made together, and in the following or a similar form:—

Appointment and demise in one operative part.

"HE, the said [*mortgagor*], by virtue and in exercise of the power or authority to him for this purpose given, in and by the said hereinbefore-recited indenture, of the day of , as aforesaid, and of all other powers and authorities in anywise enabling him in this behalf, *And* also by force and virtue of his estate and inter-

p. 303), *That* from and immediately after the execution of these presents the said messuages or tenements, hereditaments, and premises, hereinafter described and hereinafter demised, or intended so to be, and their appurtenances, shall remain and be *To the use* of the said [*mortgagee*], his executors, administrators, and assigns, for and during the term of one thousand years, to be computed from the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of or for any manner of waste; *But* subject nevertheless to the proviso or condition, and covenant or agreement, for cesser of the same term hereinafter contained; AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the said agreement, and for the consideration hereinbefore expressed, HE, the said [*mortgagor*], *Hath* bargained, sold, and demised, *And* by these presents *Doth* bargain, sell, and demise, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, &c. [*parcels*] together with all and singular out-houses, edifices, &c.; *(general words) And* the reversion, &c.; TO HAVE AND TO HOLD the said messuages or tenements, hereditaments, and all and singular other the premises hereby demised, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for and during the said term of one thousand years, for which the said messuages or tenements, hereditaments and premises, and their appurtenances, are hereinbefore appointed as aforesaid, and in or by way of confirmation of the said term; *But* subject, nevertheless, to the said proviso or condition, and covenant or agreement, for cesser thereof, hereinafter contained. PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, and

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

appointment, appoints the premises to the use of the mortgagee for one thousand years, subject to the proviso for cesser, after contained.

Second witnessing part. The mortgagor demises the premises to the mortgagee. Parcels.

Habendum to the mortgagee for the term of one thousand years, subject to the proviso for cesser after contained.

Proviso for cesser of the said term.

---

est, *Doth* by these presents direct, limit, appoint, grant, bargain, sell, and demise, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, &c. [*parcels*]; *And* the reversion, &c.; TO HAVE, TO HOLD, &c. unto the said [*mortgagee*]," &c. (as above.)

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

these presents are upon this express condition, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, (*f*) shall and do, on the day of ,

(*f*) Another form of proviso of redemption in a mortgage for securing stock, and a sum equal to the dividends in the mean time:—

Proviso for redemption in a mortgage for securing the transfer of a sum of *l.* 3 per cent. reduced Bank Annuities, and dividends in the mean time.

"PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that if the said [*mortgagor*], his heirs, executors, or administrators, shall and do, on the day of , which will be in the year 1829, in case the books of the Governor and Company of the Bank of England, for the transfer of 3*l.* per cent. reduced Bank Annuities, shall be then open, or (if the said books shall be then closed,) on the first day after the said of , on which such books shall be open, for making transfers of such stocks, well and truly transfer, or cause to be transferred, pounds, 3*l.* per cent. reduced Bank Annuities, in the said books of the said Governor and Company of the Bank of England, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns; *And* do and shall, in the mean time, and from time to time, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, such sum or sums of money, as shall be equivalent to the dividends which would have become payable to him or them, in respect of the said first-mentioned sum of pounds, 3*l.* per cent. reduced Bank Annuities, in case the same had not been so transferred as aforesaid, on or at the like days or times, and in the like shares and proportions, on or at and in which such dividends would have become payable, in case such transfer had not been so made, as aforesaid, without any deduction or abatement whatsoever, out of the same, or any part thereof, respectively, for or in respect of any taxes, charges, assessments, or impositions whatsoever, already taxed, charged, assessed, or imposed, or to be taxed, charged, assessed, or imposed, on the said messuages or tenements, hereditaments, and premises, hereby granted and released, or intended so to be, or upon the said sum of pounds, 3*l.* per cent.

182 , transfer, or cause to be transferred, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, the sum of 2000*l.* 3 per cent. reduced Bank Annuities, *And* shall and do, in the mean time, on the days on which the dividends on the 3*l.* per cent. reduced Bank Annuities are payable to the public at the Bank of England, pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, such sum or sums of money, as shall be equal to the dividends which would from time to time have been payable to him or them, in respect of the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, in case the same were then standing in his or their name or names, in such books as aforesaid, *And* shall and do make such transfer and payments respectively, without any deduction or abatement whatsoever, for or in respect of any present or future taxes, charges, assessments, payments, or impositions, or any other matter, cause, or thing whatsoever; *Then* and in such case, and immediately after such transfer and payments shall be so made as aforesaid, the said term of one thousand years hereby created shall absolutely cease, determine, and be void. (*g*) And the said [*mort-*

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

Covenants from the mort-

---

reduced Bank Annuities, so to be transferred as aforesaid, or on the said sum or sums of money to be paid, by way of dividends thereon, as hereinbefore is mentioned, or any part thereof, respectively, or upon the said [*mortgagee*], his heirs, executors, administrators, or assigns, or any other person or persons, for or on account or in respect of the said messuages or tenements, hereditaments, and premises, or of the said last-mentioned pounds, 3*l.* per cent. reduced Bank Annuities, or of the said sum or sums of money, to be paid by way of dividends thereon, as aforesaid, or any part thereof, respectively, by authority of Parliament, or otherwise howsoever, or for or on account or in respect of any other matter, cause, or thing whatsoever; *Then* and in such case," &c.

(*g*) Instead of making the term, or the indenture, void, it is generally advisable to provide that the mortgagee shall re-assign or surrender. See In-

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

*gagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following (that is to say), that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will transfer, or cause to be transferred, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, the sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, on or at the day or time mentioned in the aforesaid proviso or condition, and covenant or agreement for redemption hereinbefore contained; *And* shall and will, in the mean time, pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, such sum or sums of money, by

gagor for transfer and payment of the stock and dividends, at the times and in manner before mentioned;

---

troductory Observations. In such case, the conclusion of the form may run thus:—

Proviso for re-assignment or surrender of the term.

"*Then* and in such case, and at any time after such transfer and payment as aforesaid shall have been made, he, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, at the request and costs and charges of the said [*mortgagor*], his appointees, heirs, or assigns, assign and surrender the said messuages or tenements, hereditaments, and premises, hereby appointed and demised, or intended so to be, and their appurtenances, unto the said [*mortgagor*], his appointees, heirs, or assigns, to the intent that the said term of one thousand years therein may become merged and extinguished in the reversion and inheritance of the same hereditaments and premises, or shall and will, at the like request, costs, and charges, assign and make over the same messuages or tenements, hereditaments, and premises, and their appurtenances, unto such person or persons as the said [*mortgagor*], his appointees, heirs, or assigns, shall order or direct, for and during all the residue and remainder, which shall be then to come and unexpired, of the said term of one thousand years therein, *In trust* for him, the said [*mortgagor*], his appointees, heirs, or assigns, and to attend the inheritance."

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

way of dividends, on the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, as is or are hereinbefore in that behalf mentioned, on or at the days or times, and in the manner, in the same proviso or condition, and covenant or agreement for redemption, expressed, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents; *And* further, that the power created by the said hereinbefore-recited indenture and fine, as aforesaid, and hereby exercised, is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting power, and not exercised, released, extinguished, suspended, defeated, or avoided, in any manner whatsoever; *And* that he, the said [*mortgagor*], now hath in himself good right, &c. to appoint and demise the said messuages, &c. hereby appointed and demised, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his executors, administrators, and assigns, for the said term of one thousand years, in manner aforesaid, and according to the true intent, &c.; *And* that, if default shall be made in the transfer of the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, or any part thereof, or in the payment of such sum or sums of money, by way of dividend, as aforesaid, or any part thereof, contrary to the proviso or condition for redemption hereinbefore contained, and the true intent, &c.; *Then* and in such case, and at any time thereafter, during the said term of one thousand years, it shall and may be lawful for the said [*mortgagee*], his executors, administrators, or assigns, into and upon the said messuages or tenements, hereditaments, and premises, hereby appointed and demised, or intended so to be, or any of them, or any part thereof, to enter, and the same from time to time, and at all times thereafter, during the said term, peaceably and quietly to have, hold, occupy, possess, and enjoy, and the rents, issues, and profits thereof to receive and take, to and for his and their own use and benefit, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his appointees, heirs, or assigns, or any other person or persons whomsoever, having, or lawfully or equitably claiming, or who shall or may have, or law-

that the power is valid and subsisting;

that the mortgagor has good right to appoint and demise;

and that, if default shall be made in such transfer and payment, as aforesaid, the mortgagee may enter, and enjoy the premises for the residue of the term of one thousand years;

without interruption from the mortgagor;

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

fully or equitably claim, any estate, right, or interest, whatsoever, into or out of the said messuages or tenements, hereditaments, and premises, hereby appointed and demised, or intended so to be, and their appurtenances, or any of them, or any part or parts thereof; *And* that free and clear, and freely and clearly, and absolutely acquitted, exonerated, and for ever discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, well and effectually saved, defended, kept harmless, and indemnified, of and from and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, trusts, wills, annuities, legacies, rent-charges, rents-seck, and arrears of rent, fines, issues, amerciaments, statutes, recognizances, judgments, executions, extents, seizures, sequestrations, and all other estates, troubles, charges, debts, and incumbrances whatsoever; *And*, moreover, that if default shall be made in the transfer of the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, or any part thereof, or in the payment of such sum or sums of money, by way of dividends, as aforesaid, or any part thereof respectively, contrary to the proviso or condition for redemption hereinbefore contained, and the true intent, &c.; *Then* and in such case he, the said [*mortgagor*], and his heirs, and all and every other person and persons whomsoever, having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim, any estate, right, title, or interest whatsoever, in, to, or out of the said messuages or tenements, hereditaments, and premises, hereby appointed and demised, or intended so to be, and their appurtenances, or any of them, or any part or parts thereof, shall and will, from time to time, and at all times thereafter, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the expense of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, appointments, demises, and assurances in the law whatsoever, for the better and more perfectly and absolutely granting, appointing, demising, and assuring of the said messuages, &c.

and free from incumbrances;

and that the mortgagor will execute further assurances.

hereby appointed and demised, or intended so to be, and their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for the then residue of the said term of one thousand years, in manner aforesaid, and according to the true intent, &c., as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their, or any of their, counsel in the law, shall be reasonably devised or advised and required; PROVIDED ALWAYS, and it is hereby agreed, &c., that until default shall be made in the transfer of the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, or some part thereof, or in the payment of such sum or sums of money, by way of dividends, as hereinbefore mentioned, or some part thereof, contrary to the proviso or condition for redemption hereinbefore contained, and the true intent, &c., it shall and may be lawful to and for the said [*mortgagor*], his appointees, heirs, and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy, the said messuages, &c. hereby appointed and demised, or intended so to be, and their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him or them, or any of them. (*provision for insurance against damage by fire,* see *ante,* p. 315—19.) AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that all and every the persons and person in whom the said messuages or tenements, hereditaments, and premises, hereby appointed and demised, or intended so to be, and their appurtenances, or any of them, or any part thereof, are or is, or hereafter shall or may be, vested for any term or terms of years, or any chattel interest whatsoever, or who shall or may have any charge or lien thereupon, at law or in equity, shall stand and be possessed of, and interested in, the said terms, interests, charges, and liens respectively, so far as the same comprise, or in anywise affect, the said messuages or tenements, hereditaments, and premises, or any of them, or any

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

Proviso that the mortgagor shall quietly enjoy until default.

Declaration that the persons in whom the premises are vested, for any term of years, or who shall have any charge or lien thereon, shall stand possessed of the same terms, charges, and liens,

APPOINTMENT AND DEMISE FOR SECURING STOCK AND DIVIDENDS.

part thereof, *In Trust* for the said [*mortgagee*], his executors, administrators, and assigns, for better and more effectually securing to him and them the said sum of 2000*l.* 3*l.* per cent. reduced Bank Annuities, and dividend monies hereinbefore secured as aforesaid; *And* for that purpose, to assign and dispose of the said terms, interest, charges, and liens, respectively, from time to time, as he or they shall direct or appoint; *And* subject thereto, *In Trust* for the said [*mortgagor*], his heirs, appointees, and assigns, and to assign and dispose of the same, from time to time, as he or they shall, in that behalf, order or direct; *And* in the mean time, *In Trust,* to permit the same terms, interests, charges, and liens, respectively, to wait upon and attend the reversion, freehold, and inheritance, of the said messuages or tenements, hereditaments, and premises, and their appurtenances, and to protect the same from all mesne incumbrances (if any such there be). IN WITNESS, &c. (*h*).

In trust for the mortgagee, for better securing the stock and dividends, and for that purpose to dispose of the term as he shall direct;

and subject thereto,

In trust for the mortgagor, and to dispose of the term, as he shall direct;

and, in the mean time, to permit the same term to attend the inheritance.

Demise.

(*h*) The above precedent may be easily altered into a common *demise*, when that is necessary, by leaving out all references to the appointment, and either reciting the conveyance to the mortgagor, as in p. 292; or by simply stating that he is seised in fee, as in p. 279. Sometimes mortgages are made for securing a sum of *stock*, and also the payment of a principal sum of money. When this is the case, a separate mortgage *ad valorem* duty is payable for the *value* of the stock, and for the amount of the principal sum: 55 Geo. III. c. 184, sched. Part I. MORTGAGES. For such a form, see the first precedent under title TRUST DEEDS.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

### TRANSFER *of a* MORTGAGE *Debt, or sum of pounds, and of the* SECURITIES *for the same, to trustees,* IN TRUST *to attend a* NEW MORTGAGE;—*And* RELEASE *of an* ANNUITY, *and* SURRENDER *of a Term of Years.* (*a*)

THIS INDENTURE, made the day of , BETWEEN [*old mortgagee*], of, &c. of the first part; [*one trustee for the old mortgagee*], of &c.; and [*other trustee for the old mortgagee*], of &c. of, the second part; [*mortgagor*], of, &c. of the third part; [*one of the new mortgagees*], of, &c. [*another of the new mortgagees*], of, &c. and [*the other of the new mortgagees*] of, &c. of the fourth part; [*one of the trustees for the new mortgagees*], of, &c. and [*other of the trustees for the new mortgagees*], of, &c. of the fifth part; [*assignee of annuity*], of, &c. of the sixth part; and [*surrenderor of a term of years*], of, &c. of the seventh part; WHEREAS, by indentures of lease and release and assignment, bearing date respectively, on or about the and days of , 18 , the release and assignment being made, or expressed to be made, between the said [*mortgagor*], of the first part; [*grantee of an annuity*], therein described, of the second part; the said [*old mortgagee*], of the third part; the said [*trustees for the old mortgagee*], of the fourth part; the said [*assignee of the annuity*], of the fifth part; [*grantee of the term of years*], of, &c. of the sixth part; and the said [*surrenderor of the term*], of the seventh part; and indorsed

Parties

Recites the conveyance to the old mortgagee, subject to a proviso for redemption;

(*a*) For precedents of the most usual TRANSFERS of MORTGAGES, the reader is referred to the title TRANSFERS, in the eighth volume.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

on an indenture, bearing date the day of September, 1820, and made, or expressed to be made, between the said [*mortgagor*], of the first part; the said [*grantee of the annuity*], of the second part; and the said [*grantee of the term*], of the third part; ALL THOSE manors or lordships, &c. [*parcels*], and their rights, members, and appurtenances, were (in consideration of the sum of pounds, to the said [*grantee of the annuity*], by the said [*old mortgagee*], paid, as in the said indenture of release and assignment now in recital is mentioned) conveyed, by the said [*mortgagor*], unto and to the use of the said [*trustees for the old mortgagee*], their heirs and assigns, for ever; *But* subject to a proviso or agreement in the said indenture of release and assignment now in recital contained, for redemption of the same premises, on payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*old mortgagee*], his executors, administrators, or assigns, at or on the Royal Exchange, in the city of London, of the sum of pounds, of lawful money of Great Britain, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, on the day of then next; *And*, by the said indenture of release and assignment, it was agreed and declared, that if the said sum of pounds, or the interest thereof, or any part thereof, should not be paid on or at the day or time, and in manner mentioned in the aforesaid proviso or agreement, for payment thereof, and the said [*old mortgagee*], his executors, administrators, or assigns, should, at any time thereafter, by any writing, under his or their hand or hands, call in and require payment of the same, or so much thereof, as should then remain due, and the same should not be paid within eight calendar months next after the same should be so called in, and be required to be paid, as aforesaid, then and in such case it should be lawful for the said [*trustees for the old mortgagee*], or the survivor of them, or the heirs or assigns of such survivor, at the request of the said [*old mortgagee*], his executors, administrators, or assigns, absolutely to sell and dispose of the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises, or any of them, or any part thereof,

the power of sale to the trustees for the old mortgagee, in case of default in payment of the money secured;

TRANSFER OF A MORTGAGE, &c. IN TRUST.

as therein is mentioned, with such powers and provisions in that behalf as are therein also mentioned and contained; *And* by the said indenture of release and assignment now in recital, it was agreed and declared, that in case the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises, or any of them, or any part thereof, should be sold and disposed of, under or by virtue of the said indenture now in recital, the said [*trustees for the old mortgagee*], or the survivor of them, or the heirs or assigns of such survivors, should, with and out of the money which should arise from such sale or sales, in the first place, pay, retain, and discharge all the costs and expenses which should have been incurred or sustained, in effecting and completing the same sale or sales, or otherwise, in the execution of the trusts or powers thereinbefore declared and contained, *And* in the next place (but subject and without prejudice to certain prior charges and incumbrances thereinbefore mentioned or referred to), pay to the said [*old mortgagee*], his executors, administrators, or assigns, the said sum of pounds, and interest, thereby secured, or so much thereof respectively as should then remain due and owing, *And* should pay the surplus or residue of the said monies (if any) unto the said [*mortgagor*], his executors, administrators, or assigns, or other the person or persons for the time being entitled thereto; *And* by the said indenture of release and assignment now in recital, the said [*grantee of the annuity*] did (in consideration of the sum of pounds so paid to him by the said [*old mortgagee*], as therein and hereinbefore is mentioned, and at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*old mortgagee*], (testified as therein is mentioned) bargain, sell, assign, and set over, unto the said [*assignee of the annuity*], his executors, administrators, or assigns, an annuity or yearly rent or sum of pounds, granted and secured by the said [*mortgagor*] to the said [*grantee of the annuity*], his executors, administrators, or assigns, in and by the said indenture of the day of September, 1820, and thereby charged on the said manors, hereditaments, and premises, Together with the several powers and remedies in and

the declaration of trust of the monies produced by sales;

the assignment of an annuity granted to [ ] by the mortgagor, and charged on the premises, unto a trustee for the old mortgagee, whose money was applied in redemption of it;

TRANSFER OF A MORTGAGE, &c. IN TRUST.

by the same indenture given and granted to him and them, for securing and enforcing the payment thereof; *And* all the arrears and future payments of the same annuity, or yearly rent or sum; *And* also the covenant in the same indenture contained, on the part of the said [*mortgagor*], for payment of the said annuity, or yearly rent or sum, and all other the covenants and agreements in the same indenture contained, on the part of the said [*mortgagor*] to be observed and performed, and all the benefit and advantage thereof respectively; *And* also a bond which had been executed by the said [*mortgagor*], for securing the said annuity or yearly rent, or sum of pounds, and a judgment which had been entered up in his majesty's Court of King's Bench at Westminster, against the said [*mortgagor*], by virtue of a warrant of attorney therein referred to, for further securing the same annuity or yearly rent or sum; *And* all and every other the securities for the same annuity, or yearly rent or sum, *To hold, receive, and take* the same unto the said [*assignee of the annuity*], his executors, administrators, and assigns, *In trust*, in the first place, for the said [*old mortgagee*], his executors, administrators, and assigns, for better securing to him and them the said sum of pounds and interest, secured by the said indenture now in recital, or intended so to be, and to levy and raise, or assign and dispose of, the same annuity, or yearly rent or sum, and securities, as he or they should for that purpose order or direct; *And* subject thereto, *In trust* for the said [*mortgagor*], his executors, administrators, and assigns; *And* by the said indenture of release and assignment now in recital, the said [*grantee of the term*] did (for the consideration therein and hereinbefore mentioned, and for a nominal consideration therein expressed, and at the request and by the direction of the said [*grantee of the annuity*] and [*mortgagor*], and upon the nomination of the said [*old mortgagee*] (testified as therein is mentioned), bargain, sell, and assign, unto the said [*surrenderor of the term*], his executors, administrators, and assigns, ALL and singular the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises comprised in and demised by the

the assignment of a term of years, created for securing the annuity to a trustee for the old mortgagee;

TRANSFER OF A MORTGAGE, &c. IN TRUST.

said indenture of the day of September, 1820, with their rights, members, and appurtenances, *To hold* the same unto the said [*surrenderor of the term*], his executors, administrators, and assigns, for and during all the residue and remainder which was then to come and unexpired of a term of two hundred years, created therein by the same indenture, as in the said indenture now in recital is mentioned, *Upon* and for the same trusts, intents, and purposes, and under and subject to the same powers, provisoes, and declarations, as in and by the said last-mentioned indenture were expressed and declared, concerning the same, for securing the said annuity or yearly rent or sum of pounds therein and hereinbefore mentioned, but so, nevertheless, that the benefit of the same trusts, so far as related to the raising and paying of the same annuity or yearly rent or sum, might be transferred and belong to the said [*assignee of the annuity*], his executors, administrators, and assigns, as such trustee or trustees, as aforesaid, and so that the said powers might thereafter be exercised, under and subject to his or their direction and control; *And* by the said indenture of release and assignment now in recital, it was provided, agreed, and declared, between and by the said parties thereto, that if the said trustees thereby appointed, &c. (*setting out the power enabling the old mortgagee, his executors, administrators, or assigns, to change or appoint new trustees fully*); AND WHEREAS, by an indenture of release, bearing date on or about the day of now last past, and grounded on a lease for a year, bearing date on or about the day of the same month, the release being made, or expressed to be made, between the said [*mortgagor*], of the one part; and the said [*new mortgagees*], of the other part; *It was witnessed*, that for the considerations therein mentioned, the said [*mortgagor*] did grant, release, and confirm unto the said [*new mortgagees*], and their heirs, ALL those the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises hereinbefore particularly mentioned and described, and so comprised in and conveyed by the said hereinbefore-recited indentures, as aforesaid, with their rights, mem-

and the clauses for changing the trustees.

Also recites the conveyance to the new mortgagees, subject to the existing incumbrances, and to a proviso for redemption;

TRANSFER OF A MORTGAGE, &c. IN TRUST.

bers, and appurtenances, and all and singular other the manors or lordships, &c., of or to which he, the said [*mortgagor*], was seised or entitled, for an estate of freehold and inheritance, situate, &c., with their rights, members, and appurtenances, ***To hold*** the same (subject to the several existing charges and incumbrances thereon respectively, and also subject to the existing leases and agreements for leases of the same respectively) unto and to the use of the said [*new mortgagees*], their heirs and assigns, for ever; ***But*** nevertheless subject to a proviso or condition, in the said indenture now in recital contained, for redemption of the same premises, if the said [*mortgagor*], his heirs, executors, or administrators, should, on the day of then next ensuing, pay to the said [*new mortgagees*], their executors, administrators, or assigns, such a sum of money as should be the amount of the sum or sums of money (if any) which at any time or times before the said day of then next should be advanced by any person or persons, (*b*) either with or without the privity and consent of the said [*mortgagor*], his heirs, executors, or administrators, to them, the said [*new mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivor, and a receipt or receipts for which, under their or his hands or hand, should be indorsed on the said indenture now in recital, together with such a sum of money, by way of interest, as should be the amount of interest after the rate of 5*l.* per cent. per annum for the sum or sums of money so to be advanced, from the time or respective times of advancing the same respectively, without any deduction or abatement whatsoever; ***Or***, if no such advance as aforesaid should be made before the said day of then next; ***And***, by the said indenture of release and assignment now in recital,

and the special proviso for redemption therein contained.

Stamp.

(*b*) The deed in recital is understood to have been prepared and settled by a conveyancer of great eminence, and to have been stamped with a 25*l.* mortgage *ad valorem* duty stamp; but as the security is made to extend to an indefinite number of different persons, as well as to an indefinite sum of money, it may deserve consideration on a future occasion, whether one such stamp be sufficient. The deed is not a mere trust-deed to *raise* money, but is itself a *security*.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

it was agreed and declared that the said [*new mortgagees*], and the survivor or survivors of them, their or his executors, administrators, or assigns, should stand possessed of the money to be advanced on the security intended to be made by the indenture now in recital, upon and for the trusts, intents, and purposes, therein expressed and declared or referred to, of and concerning the same; *And* by the said indenture now in recital it was declared and agreed, that the said [*new mortgagees*], or the survivors or survivor of them, or their or his executors, administrators, or assigns, should stand and be possessed of and interested in the sum or sums of money to be advanced on the security intended to be made by the said indenture now in recital, *Upon trust* to apply so much thereof as should be necessary in paying off and discharging all the charges and incumbrances then affecting any of the said estates, save and except certain annuities, mortgages, and incumbrances in the same indenture particularly mentioned or referred to, and which did not include the charges and incumbrances respectively created and assigned by the said hereinbefore-recited indentures; *And* by the said indenture now in recital it was expressly agreed and declared, that it should be lawful for the said [*new mortgagees*], and the survivors and survivor of them, and their or his executors, administrators, or assigns, out of the monies which should be received by them or him, under the same indenture, to buy up any gross sum or sums of money then charged or secured upon the said manors or lordships, lands, and other hereditaments, or any part or parts thereof, by way of mortgage, or on any judgment or judgments, or otherwise, and any interest due, or to grow due, for the same respectively, for such sum or sums of money as to them or him should seem proper; *And* that, upon paying off, and discharging or buying, any of the said principal monies and interest, the said trustees or trustee for the time being, in case they or he should deem the same expedient, should cause or procure the same principal monies and interest, or any of them, and the securities for the same respectively, to be assigned, conveyed, or transferred to any trustees or trustee to be named by

Also a declaration that the new mortgagees should be possessed of the monies advanced to them upon the security of the same indenture, in trust to pay the incumbrances then affecting the premises, except as therein mentioned.

Also a provision that it should be lawful for the new mortgagees to buy up any mortgages, &c.

And to cause the same, and the securities thereof, to be assigned to trustees for them.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

them or him, *Upon trust* for them, the said [*new mortgagees*], their executors, administrators, or assigns, by way of further security for the principal monies and interest, to be thereby secured, or any part thereof, in such manner as to them or him should from time to time seem expedient; *And* by the said indenture now in recital it was agreed and declared that the said [*new mortgagees*], their executors, administrators, and assigns, should stand and be possessed of and interested in the principal money intended to be secured by the indenture now in recital, and the interest thereof, *In trust*, by and out of the same to repay to the person or persons who should advance any sum or sums of money to them, or any of them, in the manner thereinbefore mentioned, such sum or sums of money respectively, with interest for the same respectively, after the rate aforesaid, from the time or respective times of advancing the same respectively: AND WHEREAS the said sum of pounds remains due and owing to the said [*old mortgagee*], on the said hereinbefore in part recited indentures of the day of , but all interest for the same hath been paid up to the day of the date of these presents, as he, the said [*old mortgagee*], doth hereby admit and acknowledge: AND WHEREAS the said [*new mortgagees*], in pursuance of the trusts reposed in them in that behalf by the said hereinbefore-recited indenture of the day of , and with the privity of the said [*mortgagor*] (testified by his executing these presents), have agreed with the said [*old mortgagee*], to advance and pay to him, the said [*old mortgagee*], the sum of pounds, out of the monies which have been advanced on the security of the said last-mentioned indenture; *And* it hath been agreed, that in consideration thereof the said principal sum of pounds, due and owing on the said in part recited mortgage or security, and the interest to become due for the same shall be assigned to the said [*trustees for the new mortgagees*], upon the trusts hereinafter declared of and concerning the same. (*c*) NOW THIS INDENTURE WITNESSETH, that, in

Also recites that the principal sum lent to the old mortgagee is still owing, but that all interest has been paid; that the new mortgagees have agreed to pay off the said principal sum;

and agreement that the same, and all interest to become due thereon, should be assigned to the trustees for the new mortgagees.

First witnessing part.

(*c*) In general it is best to introduce *all* the recitals before the first witnessing part, and thereby explain the whole intention of the parties to

TRANSFER OF A MORTGAGE, &c. IN TRUST.

pursuance of the said agreement in this behalf, and in consideration of the sum of pounds, of lawful money of Great Britain and Ireland (being part of the monies which have been advanced to the said [*new mortgagees*] on the security of the said in part recited indenture of the day of last), at or immediately before the sealing and delivery of these presents, to the said [*old mortgagee*] in hand, well and truly paid by the said [*new mortgagees*], with the privity and approbation of the said [*mortgagor*], testified as hereinbefore is mentioned; (the receipt of which said sum of pounds the said [*old mortgagee*] doth hereby acknowledge, and of and from the same and every part thereof doth hereby acquit, release, and for ever discharge, the said [*new mortgagees*], and every of them, and their and every of their heirs, executors, administrators, and assigns, and also the said [*mortgagor*], his heirs, executors, and administrators, and which said sum of pounds the said [*old mortgagee*] doth hereby declare to be in full for the money in anywise due and owing on the said hereinbefore-recited indentures of the day of ); *And* also in consideration of the sum of 10*s.* of like lawful money, to him, the said [*old mortgagee*], at the same time paid by the said [*trustees for the new mortgagees*] (the receipt whereof is hereby acknowledged), He, the said [*old mortgagee*], with the privity and approbation of the said [*mortgagor*] (testified as aforesaid), and at the request and upon the nomination of the said [*new mortgagees*] (testified by their severally executing these presents), *Hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [*trustees for the new mortgagees*], their executors, administrators, and assigns, the said principal sum of pounds, so due and owing as hereinbefore is mentioned, and all interest which shall hereafter become due for the same, together with the covenants entered into by the said [*mortgagor*], in and by the said recited inden-

In consideration of *l.* paid to the old mortgagee by the new mortgagees;

and of 10*s.*, &c.

The old mortgagee assigns to the trustees for the new mortgagees the principal sum, secured to him as aforesaid, and all interest to become due for the same;

and the covenant of the mortgagor for payment thereof, and all other securities now

---

the deed prior to any part of them being carried into effect. The recitals in p. 349—50, might have been equally well inserted in this place.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

ture, of the day of , for payment of the principal monies and interest mentioned to be thereby secured, and all other securities now vested in him, the said [*old mortgagee*], for securing the said sum of pounds and the interest thereof, or any part thereof respectively, and the full benefit of the same respectively; *And* all the right, title, interest, property, claim, and demand whatsoever of him the said [*old mortgagee*], of, in, to, from, out of, or upon the same premises, and every of them, and every part thereof, together with full power and authority to ask, demand, sue for, recover, and receive, and give effectual receipts and discharges for the said sum of pounds, and the interest to become due for the same, and every or any part thereof respectively, in the name or names of the said [*old mortgagee*], his executors or administrators, To HAVE, HOLD, RECEIVE, AND TAKE the said sum of pounds, and the interest thereof, and all and singular other the premises hereinbefore assigned or expressed, and intended so to be, unto the said [*trustees for the new mortgagees*], their executors, administrators, and assigns, *Upon trust* nevertheless for the said [*new mortgagees*], their executors, administrators, and assigns, and to assign and dispose of and enforce payment of the same, or any part thereof, as they shall from time to time appoint, for the further and more perfectly securing the principal monies and interest intended to be secured by the said hereinbefore recited indenture, of the day of last, in such manner as to them, the said [*new mortgagees*], their executors, administrators, or assigns, shall seem expedient; *And* subject thereto, *In trust* for the said [*mortgagor*], his heirs and assigns, and to release and dispose of the same in such manner as he or they shall in that behalf order or direct (*d*); AND the said [*old*

vested in the old mortgagee for securing the same;

and all the right, &c., with full power to recover and give effectual discharges.

*Habendum* to the trustees for the new mortgagees, their executors, &c., upon trust for the new mortgagees, and to dispose of or enforce payment of the same, as they shall direct, and subject thereto, in trust for the mortgagor, his heirs and assigns.

Covenant from the old mort-

---

(*a*) A clause like the following may, with propriety, be inserted here:—

Proviso that the old mortgagee shall be repaid such expenses as are incurred by

"PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*old mortgagee*], his executors or administrators, or any person or persons acting in his or their name or

*mortgagee*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT and declare with and to the said [*trustees for the new mortgagees*], their executors, administrators, and assigns, that he, the said [*old mortgagee*], hath not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to, any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof he, the said [*old mortgagee*], is in anywise prevented or hindered from assigning the said sum of pounds, and interest, and other the premises hereinbefore assigned or exprssed, and intended so to be, unto the said [*trustees for the new mortgagees*], their executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents; AND WHEREAS the said [*trustees for the old mortgagee*] have respectively refused to act in the trusts reposed in them by the said hereinbefore in part recited indenture, of the day of , as hereinbefore is mentioned; AND WHEREAS it hath been agreed that the said [*trustees for the new mortgagees*] shall be appointed trustees of the said last-mentioned indenture, in the stead of the said [*trustees for the old mortgagee*], and that the said [*trustees for the old mortgagee*] shall convey the aforesaid mortgaged premises to the said [*trustees for the new mort-*

TRANSFER OF A MORTGAGE, &c. IN TRUST.

gagee, that he has done no act whereby he is prevented from assigning the monies and interest.

Recites that the trustees for the old mortgagee have refused to act;

and that it has been agreed that the trustees for the new mortgagees shall be appointed in their place;

that the mortgaged premises

---

names, under or by virtue of these presents, shall, at any time or times hereafter, pay or incur any sum or sums of money, losses, damages, costs, charges, or expenses, by reason of any action, suit, proceeding, claim, or demand, which shall be brought, commenced, or made in the name or names of the said [*old mortgagee*], his executors or administrators, under and by virtue of these presents, the same and every part thereof shall be forthwith paid or made good to the said [*old mortgagee*], his executors or administrators, or such other person or persons as aforesaid, by and out of the said sum of pounds, and interest, hereby assigned, or intended so to be, or by the said [*mortgagor*], his heirs, executors, or administrators."

acting under the power, by or out of the principal money and interest hereby assigned, or by the mortgagor.

TRANSFER OF A MORTGAGE, &c. IN TRUST.

*gagees*], their heirs and assigns, subject to the equity of redemption subsisting in the said premises, and upon the trusts and with and under the powers in and by the said indenture of the day of , declared or contained, of or concerning the same premises; *And* that the said [*assignee of the annuity*] shall release the said [*mortgagor*], his heirs, executors, and administrators, and the said hereditaments comprised in or conveyed by the said indenture of the day of September, 1820, of and from the said annuity or yearly rent or sum of pounds, and all arrears and future payments thereof, and shall enter up satisfaction on the judgment so assigned to the said [*assignee of the annuity*] by the said indenture of the day of , as aforesaid; *And* that the said [*surrenderor of the term*] shall surrender the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises, assigned to him by the said indenture of the day of , for the then residue of the said term of two hundred years, unto the said [*trustees for the new mortgagees*], their heirs and assigns, to the intent that the residue of the same term may be merged and extinguished in the reversion, freehold, and inheritance of the hereditaments and premises therein comprised; And whereas, in pursuance of the said agreement in this behalf, the said [*assignee of the annuity*] hath, immediately before the execution of these presents, executed a warrant of attorney for entering satisfaction upon the said judgment so assigned to him, the said [*assignee of the annuity*], as hereinbefore is mentioned. Now this indenture further witnesseth, that, in pursuance and performance of the said agreement in this behalf, and in consideration of the premises, and by force and virtue and in exercise and execution of the power or authority for this purpose contained in the said hereinbefore recited indenture of the day of , and of every or any other power or authority the said [*old mortgagee*] or the said [*new mortgagees*] in anywise enabling in this behalf, He, the said [*old mortgagee*], at the request and by the direction of the said [*new mortgagees*], and with the privity and approbation of the said [*mortgagor*] (testified respectively as hereinbefore is mentioned), *And* also

shall be conveyed to them, subject to the equity of redemption, &c.;

that the assignee of the annuity shall release it;

and enter satisfaction on the judgment;

and that the trustee of the term shall surrender it so as that the same may be merged in the fee;

and that the assignee of the annuity has executed a warrant of attorney for entering satisfaction on the judgment.

Second witnessing part.

The old and new mortgagees, with the approbation of the mortgagor, appoint the

TRANSFER OF A MORTGAGE, &c. IE TRUST.

they, the said [*new mortgagees*], with the like privity and approbation of the said [*mortgagor*] (so testified as aforesaid), *Do* respectively by this present deed nominate and appoint the said [*trustees for the new mortgagees*], trustees in the room of the said [*trustees for the old mortgagee*], for the purposes for which under the hereinbefore in part recited indenture of the day of , the said [*trustees for the old mortgagee*] were trustees; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement in this behalf, and in consideration of the premises and of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*trustees for the new mortgagees*] to the said [*trustees for the old mortgagee*] paid at or immediately, &c. (the receipt whereof, &c.), THEY, the said [*trustees for the old mortgagee*], with the privity and approbation of the said [*old mortgagee*], and also of the said [*mortgagor*], and at the request and upon the nomination of the said [*new mortgagees*] (testified by their respectively executing these presents), *Have*, and each of them *Hath*, bargained, sold, and released, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, and release, unto the said [*trustees for the new mortgagees*] (in their actual possession now being, &c., *reference to lease for a year*), and their heirs, ALL and singular the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and premises, comprised in or referred to, and conveyed, or expressed or intended so to be, by the said hereinbefore in part recited indentures of the said and days of , with their rights, members, and appurtenances; *And* the reversion, &c.; *And* all the estate, &c.; TO HAVE AND TO HOLD the said manors or lordships, farms, lands, messuages, or tenements, hereditaments, and all and singular other the premises hereinbefore released, or expressed or intended so to be, with their rights, members, and appurtenances (subject to the equity of redemption now subsisting in the same premises), unto the said [*trustees for the new mortgagees*], their heirs and assigns, *To the use* of them, the said [*trustees for the new mortgagees*], their heirs and assigns, for ever; *But* nevertheless upon the trusts, and with and under the powers and provisoes, in and by the said indenture of the day of , de-

trustees for the new mortgagees trustees of the premises, in the room of the trustees of the old mortgagee.

Third witnessing part.

The trustees of the old mortgagee convey the premises to the trustees for the new mortgagees.

*Habendum* to the trustees for the new mortgagees in fee (subject to the equity of redemption subsisting therein) upon the trusts, &c., declared by the before-recited indenture of the day of ;

TRANSFER OF A MORTGAGE, &c. IN TRUST.

clared and contained of and concerning the same as if the names of the said [*trustees for the new mortgagees*] had been inserted in the same indenture, instead of the names of the said [*trustees for the old mortgagee*]; And each of them, the said [*trustees for the old mortgagee*], so far as relates to his own acts and deeds only, but not further or otherwise, *Doth* hereby, for himself, his heirs, executors, and administrators, covenant, &c. (*that he hath done no act to incumber*); And this indenture further witnesseth, that in pursuance and performance of the said agreement in this behalf, and in consideration of the premises, He, the said [*assignee of the annuity*], at the request and by the direction of the said [*old mortgagee*], and with the privity and approbation of the said [*mortgagor*], and at the request of the said [*new mortgagees*] (testified as aforesaid), *Hath* acquitted, released, and for ever discharged, *And* by these presents *Doth* acquit, release, and for ever discharge the said [*mortgagor*], his heirs, executors, and administrators, and all and singular the said hereditaments and premises comprised in and conveyed by the said hereinbefore recited indenture of the day of , 18 , of and from the said annuity or yearly rent, or sum of pounds, and all arrears and future payments thereof, and all claims and demands whatsoever for or in respect of the same; And the said [*assignee of the annuity*] *Doth* hereby, for himself, his heirs, executors, and administrators, covenant and declare, with and to the said [*mortgagor*], his heirs, executors, administrators, and assigns, and also (as a separate covenant) with the said [*trustees for the new mortgagees*], their heirs and assigns, that he, the said [*assignee of the annuity*], hath not at any time heretofore made, &c., whereby, &c., he, the said [*assignee of the annuity*], is in any wise prevented or hindered from executing such release as is hereinbefore expressed to be made by him the said [*assignee of the annuity*], according to the true intent and meaning of these presents; And this indenture lastly witnesseth, that in pursuance and performance of the said agreement in this behalf, and in consideration of the sum of 10*s.* &c., He, the said [*surrenderor of the term*], at the request and by the direction of the said [*old mortgagee*], and with

Covenant from the trustees for the old mortgagee that they have done no act to incumber.

Fourth witnessing part.

The assignee of the annuity releases it.

Covenant from the assignee of the annuity that he has done no act to prevent his executing such release.

Fifth witnessing part.

The surrenderor of the term,

TRANSFER OF A MORTGAGE, &c. IN TRUST.

the privity and approbation of the said [*mortgagor*], and at the request of the said [*new mortgagees*] (testified respectively as aforesaid), and upon the acceptance of the said [*trustees for the new mortgagees*] (testified by their executing these presents), *Hath* bargained, sold, assigned, surrendered, and yielded up, *And* by these presents *Doth* bargain, sell, assign, surrender, and yield up, unto the said [*trustees for the new mortgagees*], their heirs and assigns, ALL and singular the said manors or lordships, farms, lands, messuages, or tenements, hereditaments and premises, in and by the said hereinbefore in part recited indenture of the day of , assigned or expressed to be assigned to the said [*surrenderor of the term*], as aforesaid, with their rights, members, and appurtenances; *And* all the estate, &c.; *To the end and intent* that the residue now to come and unexpired of the said term of five hundred years may merge and be extinguished in the freehold and inheritance of the same premises; AND the said [*surrenderor of the term*] *Doth* hereby for himself, &c. (*covenant that he hath done no act whereby the hereditaments and premises hereinbefore assigned and surrendered are incumbered.*) IN WITNESS, &c.

surrenders it to the trustees for the new mortgagees,

to the end that the same term may be extinguished.

Covenant from the surrenderor of the term that he has done no act to incumber.

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

DEED *of* COVENANT *to* SURRENDER COPYHOLDS *held of the Manor of , subject to a* CONDITION *to be* VOID *on transfer of a sum of* STOCK, *and payment in the mean time of a sum of* MONEY *equal to interest at 5l. per cent. per annum on the* VALUE *of the* STOCK; (*a*) *And appointment of an Attorney to make such Surrender.*

Parties.

THIS INDENTURE, (*b*) made the day of July, 1827, BETWEEN [*mortgagor*], of, &c., of the first part; [*mortgagee*], of, &c., of the second part; and [*attorney*], of, &c., of the third part. WHEREAS, at a customary court,

---

As to mortgages for securing stock and interest on the value in the mean time.

(*a*) Mortgages for securing the retransfer of stock, and a sum equal to the dividends in the mean time,* were formerly very frequent; but, since the price of stock has been so high as to render only 3*l.* or 4*l.* per cent. interest, such securities have been very seldom prepared. Where stock is lent on mortgage, it is now most common to secure the retransfer of the stock on a given day, and the payment in the mean time of a sum equal to 5*l.* per cent. on the value of the stock at the time of the loan; and for this practice the case of *Forrest* v. *Elwes*, 4 Ves. 492, is, as before stated, considered an authority. Where loans of this kind are made by trustees of settlements or wills, the only object can be the benefit of the tenant or tenants for life; and it seems very questionable whether such an investment is within the meaning of the usual clause for changing securities; and, consequently, whether, if the security failed, the trustees would, in a court of equity, be held justified in having taken private instead of public security for the benefit of the tenant for life, and without even the possibility of advantage to the remainder persons.

Stamp.

(*b*) The mortgage *ad valorem* duty being payable on the surrender, this deed was only stamped with the common deed stamp. The like observation may also be made in reference to the next precedent.

---

* For a form of such a mortgage, see *ante*, p. 326.

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

held in and for the manor of Wheathampstead with Harpenden, in the said county of , on the day of , 182 , the [*mortgagor*] was, upon a previous surrender thereof by [A. B.], of, &c., gent., duly admitted tenant to *All that* piece of land, &c. *To hold* the same unto the said [*mortgagor*], his heirs and assigns, at the will of the lord, and according to the custom of the said manor, by the rents and services therefore due and of right accustomed; AND WHEREAS, by an indenture of lease, bearing date the day of , 182 , the said copyhold or customary piece or parcel of land, cottages, and other hereditaments to which the said [*mortgagor*] was so admitted, as aforesaid, and their appurtenances (save and except a small piece of land in the said indenture particularly mentioned), were, by virtue of a license for that purpose obtained from the lord of the said manor, demised and leased to [C. D.], of , aforesaid, carpenter, for a term of twenty-one years, from the day of then last, at the yearly rent of pounds, payable by two half-yearly portions, as therein mentioned. AND WHEREAS, the said [*mortgagor*], having occasion for the sum of 200*l.*, hath applied to the said [*mortgagee*] to lend him the same, which he, the said [*mortgagee*], hath agreed to do, upon having the transfer of such a sum in the New 4*l.* per cent. Bank Annuities, transferrable at the Bank of England, as the said sum of 200*l.* would purchase at the average price of that stock, on this day secured to him, at the time and in the manner hereinafter mentioned, and upon having the payment of a sum of money equal to interest on the said sum of 200*l.*, after the rate of 5*l.* for 100*l.* by the year, in the mean time, also secured to him, at the time and in manner hereinafter mentioned, and upon the said [*mortgagor*] appointing the said [*attorney*] his attorney for the purposes hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of 200*l.* of lawful money of Great Britain and Ireland, by the said [*mortgagee*] to the said [*mortgagor*] in hand well and truly paid at or immediately, &c. (the receipt, &c.), HE, the said [*mortgagor*], doth hereby, for himself, his heirs, executors, and

Recites admission of mortgagor to the copyholds;

an indenture of lease, whereby the premises, by virtue of a license from the lord, were demised for a term of twenty-one years, at rack rent;

that the mortgagor, having occasion for the sum of *l.*, the mortgagee has agreed to lend him the same, on having the transfer of such a sum in the Bank Annuities as the said sum of *l.* would purchase, with interest in the mean time, secured to him as after mentioned.

First witnessing part.

Mortgagor covenants to

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following (that is to say), that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will, on the day of January, which will be in the year 1828, well and truly transfer, or cause to be transferred, into the name or names of the said [*mortgagee*], his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England kept for that purpose, such a sum of New 4*l.* per cent. Bank Annuities, transferrable at the Bank of England, as the sum of 200*l.*, so paid to the said [*mortgagor*] by the said [*mortgagee*] as aforesaid, would purchase according to the average price of the said New 4*l.* per cent. Bank Annuities, on the day of the date of these presents; *And* shall and will at the same time well and truly pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, the sum of 5*l.* of lawful money of Great Britain and Ireland, as and for half-a-year's interest on the said sum of 200*l.* after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents; *And* shall and will make the said transfer and payment without any deduction or abatement whatsoever, for in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *And further*, that he, the said [*mortgagor*], or his heirs, and all other necessary parties, shall and will, at the costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, at the next general or some special court to be holden in and for the said manor of , well and effectually surrender, or cause and procure to be surrendered, into the hands of the lord of the said manor, or the steward thereof, or otherwise, according to the custom of the said manor, *To the use* of the said [*mortgagee*], his heirs and assigns, ALL THAT and those the said copyhold or customary piece or parcel of land, cottages, and other hereditaments hereinbefore described, and to which the said [*mortgagor*] was so admitted, as hereinbefore is mentioned and recited, and their appurtenances, *And* all other cottages and buildings,

transfer into the name of mortgagee such a sum of Bank Annuities as the said sum of *l.* would now purchase, and at the same time pay interest thereon after the rate of 5*l.* per cent;

and also to surrender to the use of mortgagee the said copyhold premises;

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

if any, which may hereafter be erected or built on the said land or any part thereof; *And* all the estate, right, title, and interest whatsoever of the said [*mortgagor*], and his heirs, and all such other parties aforesaid, therein and thereto, To HOLD the same unto the said [*mortgagee*], his heirs and assigns for ever, at the will of the lord and according to the custom of the said manor, at the rents and by the services therefore due and of right accustomed; *But* subject to the lease or demise so made to the said [C. D.], his executors, administrators, and assigns, as aforesaid; *And* also to a condition or agreement in the said surrender to be contained or inserted, making void the same on the said [*mortgagor*], his heirs, executors, administrators, or assigns, making such transfer and payment to the said [*mortgagee*], his executors, administrators, or assigns, as is hereinbefore agreed and covenanted to be made, as aforesaid; *And further*, that, in the mean time, and until the said copyhold or customary piece or parcel of land, cottages, and hereditaments, with their appurtenances, shall be so surrendered, as aforesaid, he, the said [*mortgagor*], his heirs or assigns, shall and will stand seised thereof, *In trust* for the said [*mortgagee*], his heirs and assigns; *But* subject nevertheless as hereinbefore is mentioned; *And further*, that (*c*) if default shall be made in the transfer and payment of the said Bank Annuities and interest hereby secured, or any part thereof respectively, on or at the day or time hereinbefore mentioned for the transfer and payment of the same, *And* the said [*mortgagee*], his executors, administrators, or assigns, shall, at any time thereafter, by any writing under his or their hand or hands, call in and require transfer and payment of the same Bank Annuities and interest, and the same shall not be transferred and paid within six calendar months next after the same shall have been so called in, *Then*, and at any time thereafter, it shall be lawful for the said [*mortgagee*], his heirs or assigns, absolutely to sell and dispose of the said copyhold or customary piece or parcel of land,

to hold unto the mortgagee and his heirs, at the will, &c. but subject to a condition, to be contained in such surrender, for making void the same on transfer and payment by the mortgagor of the stock and interest before mentioned;

and, until such surrender, to stand seised of the same premises, in trust for the mortgagee.

Power of sale to the mortgagee, in case of default in transfer and payment of the aforesaid stock and interest;

(*c*) These covenants are very similar to the provisions for sale in the next deed; but, being shorter, and introduced in the form of covenants, it has been thought proper to set them out at length.

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

cottages, and hereditaments, and their appurtenances, or any part thereof, either together or in parcels, and either by public auction or private contract, as he or they shall think fit, and for such price or prices as to him or them shall seem reasonable; *And* for that purpose, to enter into, make, and execute all such agreements, surrenders, and assurances, acts and deeds, as to him or them shall seem expedient or proper; *And* that all the agreements, surrenders, assurances, acts, and deeds, which shall be made and executed by the said [*mortgagee*], his heirs or assigns, shall be equally valid and effectual, whether the said [*mortgagor*], his heirs or assigns, shall or shall not join therein, or assent thereto; *And further*, that the receipts in writing of the said [*mortgagee*], his heirs or assigns, for the monies which shall arise from such sale or sales as aforesaid, or for any rents or other monies payable to him or them by virtue of these presents, shall discharge the person or persons paying the same from being answerable for the misapplication, or liable to see to the application thereof; *And* that no person with whom any sale shall be made by virtue of these presents, shall be obliged to inquire whether, at the time of such sale, the said Bank Annuities, and interest hereby secured, or any part thereof, were or was owing, or whether the same had or had not been previously called in, in manner hereinbefore mentioned, or otherwise, into the necessity or propriety of the same sale; *And further*, that in case the said copyhold or customary piece or parcel of land, cottages, and hereditaments, and their appurtenances, or any part thereof, shall be sold, under the power or authority hereinbefore for that purpose contained, the said [*mortgagee*], his heirs or assigns, shall, with and out of the monies which shall arise from such sale or sales, in the first place pay, retain, and satisfy, all the costs, charges, and expenses which shall have been incurred or sustained in or about the said sale or sales, or in relation thereunto; *And*, in the next place, transfer and pay to him, the said [*mortgagee*], his executors, administrators, or assigns, the said Bank Annuities, and interest, hereby secured, or so much thereof respectively as shall then remain due; *And* shall pay the surplus or residue of the said monies (if any) unto the said

and for that purpose to do all such acts as to him shall seem proper;

which acts shall be valid with or without the assent of mortgagor.

That the mortgagee's receipt shall be sufficient discharges;

and that no person with whom any sale shall be made shall be obliged to ascertain the necessity or propriety of it;

and that, in case the premises shall be sold, the mortgagee shall, out of the money arising thereby, in the first place pay the expenses of the sale;

and in the next place transfer and pay the Bank Annuities and interest hereby secured;

and shall pay the surplus (if any) unto the mortgagor.

DEED OF COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

[*mortgagor*], his heirs, executors, administrators, or assigns. (*d*) AND THIS INDENTURE ALSO WITNESSETH, that in pursuance and further performance of the said agreement, HE, the said [*mortgagor*], *Doth* by these presents nominate, constitute, and appoint the said [*attorney*] to be his true and lawful attorney for him, and in his name and stead, and as his act and deed, or otherwise, to make, do, and execute all such surrenders, assurances, acts, and deeds for effectually surrendering and assuring the said copyhold or customary piece or parcel of land, cottages, and other hereditaments hereby covenanted to be surrendered, as aforesaid, and their appurtenances, or any of them, unto and to the use of the said [*mortgagee*], his heirs and assigns, in manner aforesaid, as the said [*mortgagor*] could or might be required to make, do, or execute under or pursuant to the covenants hereinbefore on his part contained, or as the said [*attorney*] shall think it reasonable or proper to make, do, or execute in the name and on the behalf of the said [*mortgagor*], in compliance with such covenants, or for otherwise carrying into effect the purposes of these presents. (*e*) IN WITNESS, &c.

Second witnessing part.

Power of attorney from the mortgagor, enabling the attorney to make and execute such surrenders and assurances in the name of the mortgagor as are above agreed to be executed.

---

(*d*) This precedent contained no covenants for title. The sum lent was too small to justify any unnecessary expense, and very little reliance was placed on the personal security of the borrower. For forms of such covenant, see the next precedent, and Index, COPYHOLDS, COVENANTS FOR TITLE.

Covenants for title.

(*e*) For some practical directions in regard to mortgages of copyholds, see the Introductory Observations.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

## Deed *of* Covenant *to accompany a* Conditional Surrender *of* Copyholds, *whereby the Mortgagor covenants for Payment of the Money lent, with Interest, and for Title, and gives a* Power *of* Sale *in case of default.* (Memorandum *of a Conditional Surrender of* Copyholds *out of Court, and* Forms *of Warrants to enter up Satisfaction and vacate the* Surrender.) (*a*)

Parties.

Recites, that at a court-baron held on the day of , the mortgagor was admitted tenant to all that, &c.

to hold the same in fee at the will of the lord, &c.;

that, soon afterwards, the mortgagor built a cottage on the copyhold premises;

THIS INDENTURE, made the day of , 182 , Between [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part: Whereas, at a court baron held in and for the manor of , otherwise , in the said county of , on the day of , 182 , the said [*mortgagor*] was duly admitted tenant to all that piece or parcel of copyhold land situate at , containing thirteen acres, two roods, and twenty-one perches, bounded on the north-east by road, on the north-west by , on the south-west by , and on the south-east by the road, To hold the same unto the said [*mortgagor*], his heirs and assigns, for ever, by copy of court-roll, at the will of the lord, and according to the custom of the said manor, by the rents and services therefore due and of right accustomed; And whereas the said [*mortgagor*], soon after he was so admitted tenant as aforesaid, did erect and build upon the said piece or parcel

---

Bond.

(*a*) Instead of a deed of covenant, the engagements entered into by the mortgagor for the payment of the principal and interest, and for the title and further assurance, are sometimes secured by a bond; but a deed of covenant is the most usual and proper mode. When a bond is required, the condition of it may be easily framed from the covenants in the above precedent.

of copyhold land hereinbefore mentioned, a cottage or tenement, with suitable offices and outbuildings thereto. (*b*) AND WHEREAS, at a court-baron this day held in (*c*) and for the said manor of , the said [*mortgagor*] hath, in consideration of the sum of pounds, to him this day paid by the said [*mortgagee*], surrendered into the hands of the lord of the said manor, by the steward thereof, or otherwise, according to the custom of the said manor, ***To the use*** of the said [*mortgagee*], his heirs and assigns, ALL THAT, the said piece or parcel of copyhold land hereinbefore particularly described, and to which the said [*mortgagor*] was so admitted tenant, as hereinbefore is mentioned, and their appurtenances, ***Together*** with the said cottage or tenement, offices and out-buildings, which have been since erected and built on part of the same copyhold land, as aforesaid, ***To hold*** the same unto the said [*mortgagee*], his heirs and assigns, by copy of court-roll, at the will of the lord, and according to the custom of the said manor, by the rents and services therefore due and of right accustomed; ***But*** subject nevertheless to a proviso or condition in the said surrender contained, for

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

that, at a court held this day, the mortgagor has surrendered the premises to the mortgagee, subject to a proviso for avoiding the surrender, if the money lent should be duly paid with interest;

---

(*b*) In Gilbert's Tenures, p. 235, it is laid down, that if a copyholder erects a new house upon his copyhold without the lord's license, it is no forfeiture, as it is an improvement of the tenement, though it alters the nature of the land; but, according to other authorities, the building of a new house *is* waste, because it alters the nature of the thing, and puts the lord to more charges. See *Brooks's* case and *Ward's* case, Viner. Copyh. (L. c.); 4 Leon. 241; and *Gray* v. *Ulysses*, Lutch. 123. Mr. Coventry, in his edition of Watkins, p. 399, cites *Steward* v. *Lombe*, 1 Brod. & Bing. 506, in support of the same position; but the case does not appear in any way to relate to copyholds.

As to building on copyholds being waste.

(*c*) If the surrender be made out of court, the following recital may be used:—

"AND WHEREAS the said [*mortgagor*] hath this day, out of court, surrendered into the hands of the lord of the manor of , in the county of , by the acceptance of [A. B.], gent., the steward of the said manor, ***All that*** messuage, &c. (*parcels*), and their appurtenances, ***To the use*** of the said [*mortgagee*], his heirs and assigns, for ever, by copy of court-roll," &c. (*as above.*)

Recital of a surrender out of court.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

making void the same, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of the said surrender and of these presents, on the day of , which will be in the year of our Lord 182 , without any deduction or abatement whatsoever; (*d*) AND WHEREAS, upon

and that on the treaty for the

---

(*d*) The following are forms of a memorandum of a conditional surrender *out of* court, and of warrants to vacate a conditional surrender:—

### *Form of Memorandum of a Conditional Surrender of Copyholds out of Court.* *

Memorandum of conditional surrender out of court.

Manor of , otherwise , in the county of } BE IT REMEMBERED, that on the day of , in the year of our Lord 1829, [*mortgagor*], late of, &c., but now of, &c., gentleman, did, in consideration of the sum of pounds, of lawful money of Great Britain and Ireland, to him then paid by [*mortgagee*], of, &c., surrender, out of court, into the hands of the lord of the said manor, by the hands and acceptance of [A. B.] gent., the steward of the said manor, by the rod, and according to the custom of the said manor, *To the use of* the said [*mortgagee*], his heirs and assigns, ALL THAT, &c. (*parcels*), with the appurtenances; *And* the reversion and reversions, remainder and remainders, and yearly and other rents, issues, and profits of the same hereditaments and premises; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, of him, the said [*mortgagor*], in, to, out of, or upon the same hereditaments and premises, *To hold* the same unto the said [*mortgagee*], his heirs and assigns, for ever, by copy of court roll, at the will of the lord, and according to the custom of the said manor, at the rents and by the services therefore due and of right accustomed; *But* subject nevertheless

---

* For a form of a conditional surrender *in* court, see 2 Scriv. Copyh. Appendix, xliii.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

the treaty for the loan of the said sum of pounds, so secured by the said hereinbefore-recited surrender, as aforesaid, it was agreed that the said [*mortgagor*] should enter into the covenants and join in the declarations and agreements hereinafter contained: NOW THIS INDENTURE WITNESSETH, that, in pursuance and part performance of the said agreement, and in consideration of the premises, HE, the said [*mortgagor*], *Doth* hereby for himself, his heirs, executors, and administrators, COVENANT, promise,

said loan it was agreed that the mortgagor should enter into the covenants hereinafter contained.

First witnessing part.

---

to and upon this express condition, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, did and should, on the day of , now next ensuing, well and truly pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the date of the said surrender, without any deduction or abatement whatsoever, out of the same sum and interest, or any part thereof, for or in respect of any present or future taxes, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever; *Then* such surrender should be void and of no effect.

[*Mortgagor.*]

Taken, the day and year first above written, by me, [A. B.], (Steward).

In the presence of [X. Y.]

### *Form of Receipt indorsed.*

RECEIVED, the day and year within mentioned, of and from the within-named [*mortgagee,*], the sum of pounds, being the consideration-money within mentioned, to be paid by him to me.

Witness, [X. Y.] [*Mortgagor.*]

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following: (that is to say), that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds, and interest, secured by the said hereinbefore-recited surrender, as aforesaid, on or at the

The mortgagor covenants that he will pay the money secured by the recited surrender.

---

*Form of Warrant to enter Satisfaction on a Conditional Surrender of Copyholds.*

Warrant to enter up satisfaction on a conditional surrender of copyholds.

The Manor of } I, [A. B.], of, &c., gent., do hereby authorize and direct the steward of this manor, or his deputy, to enter satisfaction in the court books, or on the rolls of the said manor, on a certain conditional surrender, bearing date the day of , 182 , made and passed by [C. D.], of, &c., Esq., to me, for securing the sum of pounds, with interest for the same; *And* to do all other acts, matters, and things necessary for vacating and discharging the said surrender; *And* for his so doing, this shall be a sufficient authority. Witness my hand this day of , 182 .

[C. D.]

In the presence of [E. F.]

*Form of Acknowledgment of Payment of the Money and Interest secured by a Conditional Surrender, and Warrant to vacate such Surrender.*

Acknowledgment of satisfaction, and warrant to vacate the surrender.

To [X. Y.], Esq. steward of the manor of , in the county of . } I, [A. B.], of, &c., do hereby acknowledge to have this day received of [C. D.], of, &c., the sum of pounds, in full satisfaction and discharge of all principal and interest secured to me by a conditional surrender made by the said [C. D.], of certain copyhold hereditaments and premises by him then held, of

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

day or time in the memorandum of the said surrender, and hereinbefore mentioned and appointed for the payment thereof respectively, without any deduction or abatement whatsoever; *And* further, that he, the said [*mortgagor*], was, at the time of making the said hereinbefore-recited surrender, lawfully and rightfully seised of a good, sure, absolute, and indefeasible estate of inheritance, in or as of fee-simple, according to the custom of the said manor of , of and in the said piece or parcel of copyhold land, cottage or tenement, buildings and premises, therein comprised, and their appurtenances, without any condition, trust, power of revocation, or other restraint, cause, matter, or thing whatsoever, to alter, incumber, defeat, or make void the same estate; *And* also, that if the said sum of pounds, and interest, secured by the said hereinbefore-recited surrender and these presents, or any part thereof respectively, shall not be paid conformably to the aforesaid covenant or agreement for payment of the same, and the true intent and meaning of the said surrender and these presents, *Then*, and in such case, it shall and may be lawful to and for the said [*mortgagee*], his heirs and assigns, at any time or times thereafter, into and upon the said piece or parcel of copyhold land, cottage or tenement, buildings and premises, comprised in the said hereinbefore-recited surrender, as aforesaid, and their appurtenances, or any part thereof, to enter, and the same from time to time, and at all times thereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy, and the rents, issues, and profits thereof to receive

That, at the time of making the surrender, the mortgagor was seised of the copyholds in fee, according to the custom of the manor;

that, in case of default in payment of the moneysecured, the mortgagee may enter and quietly enjoy the premises.

---

the manor of , to my use, at a court held on the day of now last past; and I therefore request and authorize you, as steward of the said manor, to vacate such surrender accordingly.* Witness my hand, this day of , 182 .

[A. B.]

In the presence of [E. F.]

---

* For the form of such entry of satisfaction in the court books, see 1 Watk. Copyh., by Coventry, p. 150.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

and take, to and for his and their own use, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his heirs or assigns, or any other person or persons whomsoever, save and except in respect of the rents and services payable and to be performed for or on account of the same premises; *And moreover,* that if the said sum of pounds, and interest, secured by the said hereinbefore-recited surrender, and these presents, or any part thereof respectively, shall not be paid conformably to the aforesaid covenant or agreement for payment of the same, and the true intent and meaning of the said surrender, and these presents, *Then* and in such case he, the said [*mortgagor*], and his heirs, and all and every other persons and person whosoever, having or lawfully or equitably claiming, any estate, right, title, or interest whatsoever, in, to, or out of the said piece or parcel of copyhold land, cottage, or tenement, buildings, and premises, comprised in the said hereinbefore-recited surrender, as aforesaid, and their appurtenances, or any of them, or any part thereof, shall and will, from time to time, and at all times thereafter, upon the request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the expense of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, things, surrenders, and assurances, in the law whatsoever, for the further, better, more perfectly, and absolutely surrendering and assuring of the said piece or parcel of copyhold land, cottage, or tenement, buildings, and premises, comprised in the said hereinbefore-recited surrender, as aforesaid, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, in manner hereinbefore mentioned, and according to the true intent and meaning of the said parties hereto, as by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises,

And for further assurance.

Second witnessing part.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

IT IS HEREBY DECLARED AND AGREED, (*e*) between and by the said parties hereto, and particularly by and on the part of the said [*mortgagor*], that, if the said sum of pounds, and interest, secured by the said hereinbefore-recited surrender, and these presents, or any part thereof respectively, shall not be paid on or at the day or time in the memorandum of the said surrender, and hereinbefore mentioned and appointed for payment of the same, according to the true intent and meaning of the said surrender, and of these presents; *And* the said [*mortgagee*], his executors, administrators, or assigns, shall, at any time thereafter, by any writing, under his or their hand or hands, to be given to the said [*mortgagor*], his executors, administrators, or assigns, or left at his or their usual or last known place or places of abode in England, call in and require payment of the same sum and interest, or of so much thereof as shall then remain due, and the same shall not be paid within six calendar months next after the same shall have been so called in or required to be paid, as aforesaid, *Then* and in such case, and at any time thereafter, it shall and may be lawful to and for the said [*mortgagee*], his heirs, executors, administrators, or assigns, absolutely to sell and dispose of the said piece or parcel of copyhold land, cottage, or tenement, buildings, and premises, comprised in the said hereinbefore-recited surrender, as aforesaid, and their appurtenances, or any part thereof, either together or in parcels, and either by public auction or by private contract, as he or they shall think fit, and for such price or prices as to him or them shall seem reasonable, with liberty for him or them to buy in the same, or any part thereof, at any auction, and to re-sell the same, at some future auction, or by private contract, as he or they

Declaration, that, in case of default in payment of the money secured, it should be lawful for the mortgagee to sell the copyholds;

---

(*e*) It is more correct to introduce the trusts or powers of sale into the surrender itself, in order that the real state of the title may appear on the court rolls; see 1 Byth. Stew. edit. p. 563. The practice, of making the mortgagor declare or grant such trust or power by the deed, in which he covenants for payment of the money and for title, has probably originated in a desire to save expense, and in the infrequency of a *sale* being actually made under such trust or power.

Power of sale should be in the surrender.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

shall think proper, without being answerable for any loss that may arise, by reason of such re-sale; *And* that, for the purposes aforesaid, it shall and may be lawful to and for the said [*mortgagee*], his heirs, executors, administrators, and assigns, to enter into, make, and execute, all such contracts, agreements, acts, deeds, surrenders, and assurances, as to him or them shall seem reasonable or proper; *And* that all such contracts, agreements, acts, deeds, surrenders, and assurances, as shall be so entered into, made, and executed, by the said [*mortgagee*], his heirs, executors, administrators, and assigns, shall, whether the said [*mortgagor*], his heirs or assigns, shall or shall not join therein, or assent thereto, be equally valid and effectual, and shall bind the said [*mortgagor*], his heirs, and assigns, *And* all persons whomsoever claiming, or to claim, by, from, through, or under, or in trust for him, them, or any of them; *And* that the receipt or receipts, in writing, of the said [*mortgagee*], his heirs, executors, administrators, and assigns, for the monies which shall arise from such sale or sales, as aforesaid, shall effectually discharge the person or persons paying the same, from being answerable or accountable for the misapplication or non-application of the monies, in such receipt or receipts expressed or acknowledged to have been received, or from being in anywise obliged or concerned to see to the application thereof; *And* that no person or persons, to or with whom any sale or sales shall be made, under or by virtue of these presents, shall be obliged to ascertain or inquire, whether, at the time of such sale or sales, the principal monies and interest, secured by the said hereinbefore recited surrender and these presents, or any part thereof, were or was due and owing, or whether the same had or had not been previously called in, in manner hereinbefore mentioned, or otherwise to inquire into the necessity or propriety of the said sale or sales; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties to these presents, that, in case the said piece or parcel of copyhold land, cottage or tenement, buildings, and premises, comprised in the said hereinbefore-recited surrender, as aforesaid, and their appurtenances, or any of them, or any part thereof, shall be sold, under or by

and to make and execute surrenders, and other assurances;

and that the receipts of the mortgagee, for the purchase monies, shall be sufficient discharges.

Declaration of trust of the monies arising from sales.

DEED OF COVENANT TO ACCOMPANY A SURRENDER OF COPYHOLDS BY WAY OF MORTGAGE.

virtue of the power hereinbefore contained, the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall, with and out of the monies which shall arise from such sale or sales, in the first place, pay, retain, and satisfy, all the costs, charges, and expenses, which he or they shall have incurred or sustained, in or about the said sale or sales, and in perfecting and completing the same, or otherwise, in relation thereunto; *And*, in the next place, pay or retain the said sum of pounds, and interest, secured by the said hereinbefore recited surrender, and these presents, or so much thereof respectively as shall then remain due; *And* shall pay the surplus or residue of the said monies (if any) unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, for his and their own absolute use and benefit. (*f*) IN WITNESS, &c.

---

(*f*) In this case the buildings were probably not of sufficient value to make a clause for insurance against damage by fire necessary; but generally it is advisable, where there are buildings, not to omit such a clause. Several clauses of the kind will be found amongst the precedents under this title. See *ante*, p. 313, and *post*. Insurance against fire.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

ASSIGNMENT *of* LEASEHOLDS, *by way of* MORTGAGE, *where the money secured is not to be paid off for* FIVE *years, unless the* MORTGAGOR *should give notice of his desire previously to pay in the same:* POWER *of* SALE, *and special* POWER *of* LEASING, *to* MORTGAGOR *and* MORTGAGEE, *before and after default: Provision enabling the* MORTGAGEE *to pay the rent and perform the covenants in the Lease, and* CHARGE *on the Premises of the monies which should be advanced for that purpose, with interest:* COVENANT *for* PAYMENT, *and Usual Covenants for* TITLE *in mortgages of* LEASEHOLDS. (*a*)

Parties.

THIS INDENTURE, made the day of , between [*mortgagor*], of, &c. of the one part; and [*mortgagee*], of, &c. of the other part; WHEREAS, by an indenture of lease, bearing date the day of now last past, and made, or expressed to be made, between [A. B.], therein described, of the one part; and the said [*mortgagor*], of the other part; the said [A. B.] did (for the considerations therein mentioned) demise and lease unto the said [*mortgagor*], his executors, administrators, and assigns, *All that* piece or parcel of land or ground, situate and being in the parish of , in the county of , in or near a certain street there, called "Street," containing, on the north side next the said street, feet and inches of assize, on the east side, &c. Together with the messuage or tenement and other buildings erected and built thereon, &c. (*reference to a plan*), *And* the appurtenances to the same premises belonging or

Recites an indenture of lease, whereby the premises were demised to the mortgagor for a term of ninety-eight years;

(*a*) For some general remarks and practical directions in regard to preparing mortgages of leaseholds, the reader is referred to the Introductory Observations to this title, and to the next precedent.

appertaining, ***To hold*** the same piece or parcel of land or ground, messuage, or tenement, and premises, and their appurtenances, unto the said [*mortgagor*], his executors, administrators, and assigns, from the day of then last past, for the term of ninety-eight years, thence next ensuing, at the yearly rent of pounds, payable quarterly, as in the said indenture is mentioned, and under and subject to the covenants and agreements in the same indenture contained, on the lessee's part to be observed and performed; AND WHEREAS the said [*mortgagor*], having occasion for the sum of pounds, has requested the said [*mortgagee*] to advance and lend him the same, which he hath consented and agreed to do, upon having the repayment thereof, with interest for the same after the rate of 5*l.* for 100*l.* by the year, secured by an assignment in manner hereinafter mentioned, of the said piece or parcel of land or ground, messuage or tenement, buildings and premises, hereinbefore described, and so comprised in and demised by the said hereinbefore-recited indenture as aforesaid, ***And*** by the covenant of the said [*mortgagor*] hereinafter in that behalf contained: NOW THIS INDENTURE WITNESSETH, that in pursuance and part-performance of the said agreement, and in consideration of the sum of pounds, of lawful money, &c., by the said [*mortgagee*] to the said [*mortgagor*] in hand well and truly paid, at, &c. (the receipt, &c.) HE, the said [*mortgagor*], ***Hath*** granted, bargained, sold, and assigned, ***And*** by these presents ***Doth*** grant, bargain, sell, and assign, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT and those the said piece or parcel of land or ground, messuage or tenement, buildings and premises, comprised in and demised by the said hereinbefore-recited indenture of lease as aforesaid, and their appurtenances, ***And*** all the estate, &c. TO HAVE AND TO HOLD the said piece or parcel of land or ground, messuage or tenement, buildings, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, from henceforth for and during all the residue and

at the rent, &c.

That the mortgagor, having occasion for the sum of *l.*, the mortgagee hath agreed to lend him the same, on the repayment thereof, with interest, being secured, as after mentioned.

First witnessing part.

The mortgagor assigns the premises to the mortgagee.

*Habendum* to the mortgagee, for the residue of the term, subject as after mentioned.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

remainder which is now to come and unexpired of the said term of ninety-eight years, created by the said hereinbefore-recited indenture of lease as aforesaid, at, under, and subject to the rents, covenants, conditions, and agreements in the same indenture respectively reserved and contained, on the lessee's part to be paid, observed, and performed; *And* also under and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained, of and concerning the same; PROVIDED ALWAYS, and it is hereby covenanted, declared, and agreed, by and between the said parties to these presents, that if the said [*mortgagor*], his executors, administrators, or assigns, or any of them, shall and do well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, on the day of , 1832; (*b*) *And* shall and do, in the meantime, pay interest for the same sum after the rate of 5*l.* for 100*l.* by the year, by equal half-yearly portions, on the day of , and the day of , in each year, without any deduction or abatement out of the same, for or in respect of any matter, cause, or thing whatsoever; *And* also shall and do, in the meantime, pay, observe, and perform the rents, covenants, and agreements in the said recited indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, as the said rent shall become payable, and the said covenants and agreements shall be to be observed and performed: *Then* and in such case, and at any time thereafter, he,

Proviso, that if the mortgagor pays the principal money and interest at the time appointed, and in the meantime pays the rent, and performs the covenants reserved and contained in the before-recited indenture, the mortgagee will reassign the premises, free from incumbrances.

---

Clauses for allowing mortgage money to remain for a number of years.

(*b*) Where it is agreed that the money lent shall remain on the security for a given number of years, it is not unfrequently the practice with many conveyancers to make the money, in the proviso for redemption, payable at the end of six months from the date of the mortgage-deed; and to introduce subsequent clauses to prevent the mortgagor from paying off the money before the expiration of the stipulated number of years, and to prevent the mortgagee from exercising his power of sale, or using his other remedies for recovering payment of it, until that period, provided the interest, in the meantime, is duly paid. For forms of such clauses, see *ante*, p. 304-7.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

the said [*mortgagee*], his executors, administrators, or assigns, shall and will, at the request and costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, re-assign the said piece or parcel of land or ground, messuage or tenement, buildings and premises, hereby assigned or intended so to be, with their appurtenances, unto the said [*mortgagor*], his executors, administrators, and assigns, or as he or they shall in that behalf order or direct, for all the then residue of the said term of ninety-eight years, free from all incumbrances whatsoever, made, done, or committed by the said [*mortgagee*], his executors, administrators, or assigns, so as for the doing thereof he or they, or any of them, be not compelled or compellable to go or travel from the place or places of his or their, or any of their, usual abode or dwelling; PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that in the meantime, and until default shall be made in payment of the said sum of pounds, or the interest thereof, or some part thereof respectively, contrary to the aforesaid proviso for payment of the same, and the true intent and meaning of these presents, *or* in payment or observance or performance of the rent, covenants, and agreements in the said hereinbefore-recited indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, when the same respectively ought to be paid, or observed or performed, it shall be lawful for the said [*mortgagor*], his executors, administrators, or assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy the said piece or parcel of land or ground, messuage or tenement, buildings and premises, hereby assigned or intended so to be, and their appurtenances, and to receive and take the rents and profits thereof, to and for his and their own use and benefit, without any let, suit, interruption, or disturbance of or by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons claiming or to claim by, from, under, or in trust for him, them, or any of them; PROVIDED ALWAYS, and it is hereby further agreed and declared, between and by the said parties hereto, that if default shall be made in payment of the said sum

Proviso that, until default shall be made in payment of the money and interest, or in payment or performance of the rent and covenants, the mortgagor may quietly enjoy the premises.

Power of sale to mortgagee, in case of default in payment of the

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

of pounds, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso for payment of the same, and the true intent and meaning of these presents, or in payment, or observance or performance, of the rents, covenants, and agreements in the said hereinbefore-recited indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, when the same respectively ought to be paid, or observed or performed, and the said [*mortgagee*], his executors, administrators, or assigns, shall at any time thereafter, by writing under his or their hand or hands, to be given to the said [*mortgagor*], his executors, administrators, or assigns, or left at his or their usual or last known place or places of abode in England, require the payment of the principal money, interest, or rent which shall for the time being have become payable, or the observance or performance of the covenants or agreements which ought for the time being to be observed and performed, and the same shall not be paid, or observed or performed, for the space of six calendar months next after the same shall have been required to be paid, or observed or performed, as aforesaid, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, at any time thereafter, absolutely to sell and dispose of the said piece or parcel of land or ground, messuage or tenement, buildings and premises, hereby assigned, or intended so to be, and their appurtenances, or any part thereof, for all the then residue of the said term of ninety-eight years therein as aforesaid, either by public auction or private contract, as he or they shall think fit, and for such price or prices as to him or them shall seem reasonable; *And*, for effectuating such sale or sales, to enter into and execute all such contracts, assignments, assurances, acts, deeds, or things, as to him or them shall seem expedient or proper; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the receipt or receipts, &c. (as *ante*, p. 312); *And* that no person or persons to or with whom any sale or sales as aforesaid shall be made, shall be obliged to inquire whether, at the time of such sale or sales, the premises, for the time being sold, had or had not become

money and interest, or in payment and performance of the rent and covenants in the lease.

And, for effectuating such sale, to enter into contracts, &c.

Declaration that the mortgagee's receipts shall be sufficient discharges;

And that no purchaser shall be obliged to inquire into the propriety of such sale.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

saleable, or in any other manner to inquire into the necessity or propriety of the said sale or sales. AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that in case the said piece or parcel of land, &c., (*shall be sold, the* [*mortgagee*] *shall apply the money in payment of the expenses of the sale, and the principal and interest, as ante,* p. 313); *And* also all such sum or sums of money and interest as shall hereafter become a charge upon the said hereby assigned premises, under or by virtue of the proviso or agreement hereinafter in that behalf contained, and shall then remain due and owing; *And* do and shall pay the surplus or residue of the said monies (if any) unto the said [*mortgagor*], his executors, administrators, or assigns; *And* if the whole of the said hereby assigned premises shall not be sold for the payment of such costs, expenses, principal monies, and interest as aforesaid, *Then* do and shall (after full payment of the same costs, expenses, principal monies, and interest) re-assign and assure the said premises which shall remain unsold, and their appurtenances, unto the said [*mortgagor*], his executors, administrators, and assigns, for the then residue of the said term of ninety-eight years, *subject* to the payment of so much of the said rent of pounds, reserved in the said hereinbefore-recited indenture of lease, as shall not be agreed to be paid by the purchaser or purchasers of the premises which shall have been sold, and also to the observance and performance of the covenants and agreements in the same indenture contained, which thenceforth, on the part of the tenant or assignee of the said premises, ought to be observed and performed; PROVIDED ALWAYS, and it is hereby further agreed and declared, between and by the said parties hereto, that if the said piece or parcel of land or ground, messuage, or tenement, buildings, and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, shall, at any time before the same shall be re-assigned to the said [*mortgagor*], his executors, administrators, and assigns, under the proviso hereinbefore for that purpose contained, or become saleable as aforesaid, become untenanted, the said [*mortgagee*], his executors, administrators, or assigns, do and shall

Declaration of trust of the monies arising by the sales.

Proviso that, if the whole of the premises shall not be sold, the mortgagee shall re-assign such part as shall remain unsold to the mortgagor, subject to the payment of so much of the rent as shall not be agreed to be paid by the purchasers of the other premises; and to the performance of the covenants, &c.

Proviso that, if the premises, before they are re-assigned or become saleable, shall be untenanted, the mortgagee shall demise the same for any term of years not exceeding fourteen years, as the mortgagor shall direct, at rack rent, &c.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

lease and demise the premises which shall so for the time being become untenanted, to such person or persons, and for such term or number of years, not exceeding fourteen years, as the said [*mortgagor*], his executors, administrators, or assigns, shall order or direct, so that there be reserved, in every such lease or demise, the best yearly rent that can be reasonably obtained for the same, without taking any fine or premium for the making thereof;

Proviso, that if, after the premises shall become saleable, and before they are actually sold, they shall become untenanted, the mortgagee may demise the same for any term of years, not exceeding fourteen years, as he may think proper.

PROVIDED ALWAYS, and it is hereby further agreed and declared, between and by the said parties hereto, that if the said piece or parcel of land or ground, messuage or tenement, buildings, and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, shall, at any time after the same shall become saleable, under the power hereinbefore for that purpose contained, and before the same shall be actually sold, become untenanted, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to lease and demise the premises which shall so for the time being become untenanted as last aforesaid, to such person or persons, and for such term or number of years, not exceeding fourteen years, as he, the said [*mortgagee*], his executors, administrators, or assigns, shall think proper, so that there be reserved on every such lease or demise the best yearly rent that can be reasonably obtained for the same, without taking any fine or premium for the making thereof;

Declaration, that, in every demise, there shall be inserted a condition for re-entry, on non-payment of the rent reserved, and similar covenants to those contained in recited lease;

AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that in every lease or demise which shall be made under the powers or provisoes hereinbefore contained, there shall be inserted a condition for re-entry, on non-payment of the rent or rents thereby reserved, for the space of twenty-one days next after the same shall become due, and similar covenants on the part of the lessee or lessees therein named, as are contained in the said hereinbefore-recited indenture of lease, on the part of the said [*mortgagor*]; *And* that the lessee or lessees named in every such lease or demise, as aforesaid, shall execute a counterpart of such lease or demise; (*provisions for keeping the premises insured against loss or damage by fire, see ante*, p. 315, 319, *and Index*);

and that the lessees shall execute counterpart.

Insurance proviso.

Proviso, that if the mortgagor shall neglect to

PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said par-

ties hereto, that if, at any time, while any monies shall remain due and owing on the security of these presents, the said [*mortgagor*], his executors, administrators, or assigns, shall neglect or refuse to pay the rent, or observe or perform the covenants or agreements in the said hereinbefore recited indenture of lease respectively reserved and contained, on his and their part to be paid, observed, and performed, for the space of fifteen days next after the same ought respectively to be paid, or observed or performed, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to pay, or observe or perform, or cause to be paid, or observed or performed, such part of the said rent, or such of the said covenants or agreements, as ought for the time being to be paid, or observed or performed; *And* that the said piece or parcel of land or ground, messuage, or tenement, buildings, and premises, hereby assigned, or intended so to be, and their appurtenances, shall stand and be chargeable with and subject to the payment to the said [*mortgagee*], his executors, administrators, and assigns, of all such sum or sums of money, not exceeding, in the whole, the sum of pounds, as he or they shall advance or expend, on account or in respect of the said rent, covenants, and agreements, together with interest, for the same sum or sums, after the rate of 5*l.* for 100*l.* by the year, to be computed from the time, or respective times, such sum or sums shall have been advanced; (*c*) *And* that the said

pay the rent, or perform the covenants reserved and contained in the before-recited indenture, the mortgagee may pay or perform the same;

and that the premises shall be charged with the payment of such sums of money as he shall expend in respect of such rent and covenants, with interest, from the time of his paying the same;

and that the premises shall not be redeemable until payment thereof.

(*c*) Without this provision, a court of equity would not allow the mortgagor to redeem, except upon repayment of all monies which the mortgagee should have paid for rent, repairs, &c. together with, as it is conceived, interest, from the time of such payment being made; but, to obviate all doubt, it is usual and best expressly to provide for this. Where such a provision is introduced, it is generally followed by a clause, limiting the amount to which the security is to extend, and the mortgage *ad valorem* duty is paid on that amount; but it seems very questionable, whether such a provision be necessary, or whether the legislature intended that any stamp-duty should be paid for money advanced for such a purpose; and, indeed, whether the clause might not, in some cases, limit the security which the mortgagee would otherwise have for such advances.

As to provisions for repayment of expenses in repairs, &c.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

premises shall not be redeemed or redeemable until the repayment of the same respectively; PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that the said [*mortgagor*], his executors, administrators, or assigns, shall not be at liberty, without or against the consent of the said [*mortgagee*], his executors, administrators, or assigns, to pay the interest of the said sum of pounds, hereby secured as aforesaid, while any monies shall remain due and owing to him or them, in respect of any advances he or they may have made, under or by virtue of the provisoes or agreements lastly hereinbefore contained, any thing herein contained to the contrary thereof, in anywise notwithstanding; PROVIDED ALWAYS, and it is hereby expressly agreed and declared, between and by the said parties hereto, that it shall and may be lawful to and for the said [*mortgagor*], his executors, administrators, or assigns, at any time or times hereafter, upon giving six calendar months' previous notice in writing, of his or their intention so to do, to the said [*mortgagee*], his executors, administrators, or assigns, to pay in the said sum of pounds, hereby secured as aforesaid, notwithstanding the time hereinbefore appointed for the payment thereof shall not have arrived, provided the interest which shall for the time being be due for the same be previously paid; *And* that, if the said sum of pounds shall be paid in before the time hereinbefore appointed for the payment thereof, either out of the monies which shall arise by any such sale or sales, as aforesaid, or under or by virtue of this present power, interest thereon shall cease, from the time the same shall be paid in, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; (*d*)

Proviso, that the mortgagor shall not be at liberty, without the consent of the mortgagee, to pay the interest of the principal money hereby secured, while any monies remain due, in respect of advances made under the last-mentioned proviso.

Proviso, that the mortgagor may, on giving six months' previous notice to the mortgagee, pay in the principal money hereby secured, before the time appointed for payment thereof, if the interest be previously paid.

And that, if the principal money shall be paid before the time appointed, interest thereon shall cease, from the time the same shall be paid.

If mortgage debt be paid off before the time appointed, it is not usury to take interest to that time.

(*d*) This clause is useful, if not absolutely necessary, to prevent any question arising between the parties, as to whether the mortgagor, if he pays off the mortgage before the time appointed, must not pay the whole interest reserved, notwithstanding. In *Talbot* v. *Braddyl*, 1 Vern. 395, it was said, "If I lend 100*l.* upon a mortgage, with a proviso to redeem, on payment of 112*l.** at the end of two years, there one side cannot foreclose

* At this time, 6*l.* per cent. was *legal* interest.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following (that is to say), that the said hereinbefore-recited indenture of lease is a good, valid, and subsisting lease and demise in the law, and in no wise surrendered, forfeited, merged, or rendered void or voidable; *And* that he, the said [*mortgagor*], now hath in himself good right, full power, and lawful and absolute authority, by these presents, to grant, assign, and assure the said premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for all the residue of the said term of ninety-eight years, created therein, as aforesaid, in manner and subject as hereinbefore is mentioned, according to the true intent and meaning of these presents; (*e*) *And* further, that if default shall be made in payment of the said sum of pounds, or the interest thereof, or of any part thereof respectively, contrary to the aforesaid proviso for payment of the same, and the true intent and meaning of these presents, or in payment, or observance or performance, of the rent, covenants, and agreements, in the said hereinbefore recited indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, or any of them, as and when the same respectively ought to be paid, observed, and performed, *Then* and in such case, and at any time thereafter, it shall be

Covenants from the mortgagor, stating the recited lease, is valid;

and that he has good right to assign the premises;

and that, if default shall be made in payment of the monies and interest, or in payment of the rent and performance of the covenants reserved and contained in the recited lease, the mortgagee may enter and enjoy the premises;

---

till the end of two years; but if the mortgagor come at the end of the first year, and offer to pay the 112*l.*, he shall be admitted to the redemption." It would seem, from this case, that, under the circumstances, the *acceptance* of the 12*l.*, for the use of the 100*l.* for the *one* year, would not be considered *usury*.

(*e*) Where there is no separate provision for payment of the rent and performance of the covenants in the lease, it is usual, in this place, to insert a covenant, that the rent and covenants have been paid and performed up to the time of the mortgage, and also for the payment and performance of such rent and covenants during the continuance of the mortgage. See the next Precedent.

As to covenants in a mortgage to indemnify against rent and covenants in a lease

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

lawful for the said [*mortgagee*], his executors, administrators, and assigns, to enter into and upon, and to have, hold, possess, and enjoy the said premises hereby assigned, or intended so to be, or any of them, or any part thereof, and to have, receive, and take the rents, issues, and profits thereof, for the then residue of the said term of ninety-eight years, without any molestation, hinderance, interruption, or denial whatsoever, of, from, or by him, the said [*mortgagor*], his executors, administrators, or assigns, or any other person or persons whomsoever, save and except in respect of the rent, covenants, and agreements, respectively reserved and contained in the said hereinbefore-recited indenture of lease, as aforesaid; *And* that free and clear of and from all other estates, titles, troubles, charges, debts, and incumbrances whatsoever; *And moreover*, that he, the said [*mortgagor*], his executors, administrators, and assigns, and all other persons whosoever, having or claiming, or who shall or may have or claim, any estate or interest in the said premises hereby assigned, or intended so to be, or any part thereof, shall and will, upon every reasonable request of the said [*mortgagee*], his executors, administrators, or assigns, at the costs and charges of the said [*mortgagor*], his executors or administrators, until the premises shall be sold under the power hereinbefore for that purpose contained, in case the same shall be sold, and in the event of and after any such sale, then at the costs and charges of the purchaser or purchasers of the said premises, his, her, or their executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such grants, assignments, and assurances whatsoever, as shall be needful and necessary for the more perfectly, absolutely, or satisfactorily granting, assigning, and assuring of the said premises hereby assigned, or intended so to be, with the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for all the then residue of the said term of ninety-eight years, created therein as aforesaid, in manner and subject as hereinbefore is mentioned, and according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, adminis-

free from incumbrances,

and for further assurance.

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

trators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required; AND in pursuance and further performance of the said agreement, the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, with interest for the same, after the rate of 5*l.* for 100*l.*, by the year, on or at the days or times mentioned in the aforesaid proviso for payment of the same, and according to the true intent and meaning of these presents; *And*, also, shall and will, within two calendar months next after notice in writing so to do shall have been given by the said [*mortgagee*], his executors, administrators, or assigns, to him or them, or left at his or their usual or last known place or places of abode in England, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, all such sum or sums of money as he or they shall have laid out or expended for effecting or keeping on foot any such insurance or insurances as hereinbefore mentioned, or on account or in respect of the rent, covenants, and agreements respectively reserved and contained in the said hereinbefore-recited indenture of lease, as aforesaid, together with interest for the same, after the rate and to be computed as hereinbefore is mentioned; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that these presents shall be a security for the sum or sums which shall be advanced or paid by the said [*mortgagee*], his executors, administrators, or assigns, on account or in respect of the said rent, covenants, and agreements, reserved and contained in and by the said hereinbefore-recited indenture of lease, as aforesaid, to the extent of pounds only; AND the said [*mortgagee*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with

The mortgagor covenants with the mortgagee for payment of the principal monies and interest hereby secured, at the times before mentioned;

and also, for the payment of all such sums of money as the mortgagee shall expend in insuring the premises, or in respect of the rents and covenants before mentioned.

Proviso that these presents shall be a security in respect of such advances, to the extent of *l.* only.

Covenant from the mortgagee that he will not proceed to a sale without

OF LEASEHOLDS BY ASSIGNMENT, SPECIAL POWERS OF SALE, AND LEASING.

giving six months' previous notice to the mortgagor;

and to the said [*mortgagor*], his executors, administrators, and assigns, that he, the said [*mortgagee*], his executors, administrators, or assigns, shall not, nor will, proceed to a sale of the said piece or parcel of land or ground, messuage or tenement, buildings and premises, hereby assigned, or intended so to be, or any part thereof, under or by virtue of the power or proviso hereinbefore for that purpose contained, without giving six calendar months' previous notice, in writing, of his or their intention so to do, to the said [*mortgagor*], his executors, administrators, or assigns, or leaving such notice at his or their usual or last known place or places of abode in England; *And* that, if the said piece or parcel of land or ground, messuage or tenement, buildings and premises, or any part thereof, shall be sold under or by virtue of the said power or proviso, he, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, upon the completion of the sale thereof, procure from the purchaser or purchasers of the same, a proper bond or bonds for indemnifying the said [*mortgagor*], his heirs, executors, and administrators, and every of them, of and from the payment of the rent and the observance and performance of the covenants and agreements in the said hereinbefore-recited indenture of lease respectively reserved and contained, on the lessee's part, to be paid, observed, and performed, in respect of the premises sold to such purchaser or purchasers, and all claims and demands whatsoever for or on account thereof. IN WITNESS, &c.

and that, if the premises shall be sold, the mortgagee will obtain bonds from the purchasers, to indemnify the mortgagor against payment of the rents and performance of the covenants reserved and contained in the recited lease.

## MORTGAGE *of* LEASEHOLDS *by* DEMISE *or* UNDER-LEASE, *and* ASSIGNMENT *of Furniture and other Effects on the Premises, and which had been previously bargained and sold, for securing a Debt or Sum which was paid off out of the Mortgage Money.* (*a*)

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

THIS INDENTURE, made the day of , 1829, BETWEEN [*mortgagor*], of, &c., of the first part; Parties.

---

(*a*) In preparing mortgages of *leaseholds*, a difficulty often arises as to whether the security should be made by assignment, or by demise or under-lease. When the lease is valuable, the rent of small amount, and the covenants not such as to involve any great responsibility, an *assignment* may be properly made; more particularly where a power of sale is given, and provisions for the indemnity of the assignee against the rent and covenants are inserted. On the other hand, when the value of the leaseholds is at all doubtful, the rent is high, or the lease contains a covenant for building, or any other covenant, the observance of which may subject an assignee to great loss, or to the expenditure of any considerable sum, it is important that the mortgage should be made by demise. Many persons make it a rule *always* to prepare a mortgage of leaseholds by demise, on account of the covenant to keep the premises in repair, which is expressed or implied in all leases, and which often contains no exception of accidents by fire; but, as the danger from loss by fire may be protected against by an insurance, and as the title under an assignment confers a more marketable interest in case of a sale, and also deprives the mortgagor of all legal interest in the property which can in any way prejudice the mortgagee, an assignment is often the best mode of preparing the security. This is most obviously the case where the lease contains covenants for renewal, or other beneficial covenants from the lessor, the advantage of which, if the mortgage be made by underlease, can be only secured to the mortgagee by the *covenant* of the mortgagor; and there may be great difficulty in enforcing the performance of such covenant. Indeed, with a power of sale, there are

As to whether mortgages of leaseholds should be by assignment, or by demise or under-lease.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

[*bargainee of the furniture*], of, &c., of the second part; and [*mortgagee*], of, &c., of the third part. WHEREAS, by an indenture of lease bearing date the day of , 1828, and made, or expressed to be made, between [X. Y.], of, &c., of the one part, and the said

Recites the lease granted to the mortgagor;

---

few cases in which an assignment would not be the preferable mode, assuming, of course, that the lease is unquestionably of such value as to be in all events certainly *saleable*. It was formerly considered clear law that an *absolute assignment* vested the estate in the assignee before entry, and that he thereby became subject to the rent and covenants in the lease. *Traborne* v. *Sadlier et al.* 5 B. P. C. 179; *Cook* v. *Harris*, 1 Lord Raym. 369. And the same doctrine was also held in equity. *Sparkes* v. *Smith*, 2 Vern. 276; *Pilkington* v. *Shaller*, 2 Vern. 374; *Lucas* v. *Comerford*, 1 Ves. Jun. 235, 3 B. C. C. 166; *City of London* v. *Nash*, 1 Ves. 12, 3 Atk. 512. But, in a more recent case, a contrary decision was made in the Court of King's Bench. In this case (*Eaton* v. *Jacques*, Doug. Rep. 455, 4th edit.), it was determined that a mortgagee, assignee of a term of years, should not be liable to the rent and covenants in a lease, unless he had taken actual possession. Lord Mansfield, in delivering judgment, observed, that the case of a mortgage of leaseholds by assignment, must have occurred in a thousand instances, but no landlord had ever before attempted to charge a mortgagee, not in possession, with the rent or covenants, and that that was a strong argument against the plaintiff. His lordship said that, "in leases, the lessee being a party to the original contract, always continued liable, notwithstanding the assignment; the assignee was only liable with respect to his possession of the thing. He bore the burden while he enjoyed the benefit, and no longer; and if the whole was not passed, if a day only was reserved, he was not liable. To do justice between men, it was necessary to understand things as they were, and construe instruments according to the intent of the parties. What was the effect of this instrument between the parties?—The lessor was a stranger to it; he should not be injured, but he was not entitled to any benefit under it. Could they shut their eyes, and say it was an absolute conveyance? It was a mere security; and it was not, nor ever was, meant that possession should be taken until default of payment, and payment of the money had been demanded. If the mortgagee had wanted possession, he could not have entered *via facti*; he must have brought an ejectment. This was the understanding of the parties, and was not contrary to any rule of law. It was not an assignment of all the mortgagor's estate, right, title," &c.

*Eaton* v. *Jacques.*

The doctrine laid down in the above case was confirmed by another case in the same court (*Walker* v. *Reeves*), which soon followed it, and which

[*mortgagor*] of the other part, the piece or parcel of land or ground, messuage or tenement, coach-house, stable, and premises, hereinafter described, and intended to be hereby demised, and the appurtenances, were (for the considerations therein mentioned) demised by the said [X. Y.]

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

---

is stated in a note, in Doug. 460; and also by two other cases, relating to the mortgage of ships: the former, *Chinnery* v. *Blackburne*, 1 H. Bl. 117, n., being decided by the Court of King's Bench, and the latter, *Jackson* v. *Vernon*, ibid, being a decision of the Court of Common Pleas. In the one case it was held, that a mortgagee out of possession could not maintain an action at law for the freight; and in the other, that such a mortgagee was not liable for goods furnished for the use of the ship.

The case of *Eaton* v. *Jacques* has, however, been since held not to be rightly decided, and the confidence with which the judgment was delivered seems *now* somewhat amusing. In the case of *Westerdall* v. *Dale*, 7 T. R. 312, Lord Kenyon said, "As to the cases respecting a mortgagee, whether in or out of possession, he is the legal owner, and must be so considered in a court of law, notwithstanding his title is subject to equitable interests." The cases of *Stone* v. *Evans*, stated in Woodfall's Tenant Law, p. 113, 2d edit., and *Turner* v. *Richardson*, 7 East, 335, are to the same effect; but the principal and most important decision on this point is *Williams* v. *Bosanquet*, 1 Brod. & Bing. 238, in which *Eaton* v. *Jacques* was expressly overruled; and it was finally determined, after solemn argument at Serjeant's Inn, on a question reserved for the opinion of the twelve judges, that where a party takes an assignment of a lease by way of mortgage, as a security for money lent, the whole interest will be transferred to and vested in him, and he will become liable to the rent and covenants, although he may not have occupied or become possessed in fact. Sometimes, where the mortgage security is made by demise or under-lease, a declaration of trust is introduced, that the mortgagor shall stand possessed of the lease, subject to the under-lease, in trust for the mortgagee, his executors, administrators, and assigns, but so as that he and they shall not be liable to the rent and covenants. The following is a recital of such a deed:—

*Williams* v. *Bosanquet.*

"And whereas, by an indenture of demise by way of mortgage, bearing date the day of , and made, or expressed to be made, between the said [*mortgagor*], of the one part; and [*mortgagee*], therein described, of the other part, the said messuage or tenement, coach-houses, stables, and premises, comprised in and de-

Recital of an under-lease by way of mortgage, with a declaration of trust, in favour of the mortgagee of the original term, subject to the under-lease.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

unto the said [*mortgagor*], his executors, administrators, and assigns, from the 24th day of June, 1828, for the term of fifty-three years, at the yearly rent of pounds, payable quarterly, and subject to the lessee's covenants and agreements therein contained; AND WHEREAS, by an indenture (*b*) bearing date the day of last, and made,

The indenture of bargain and sale of the furniture to the bargainee;

---

mised by the said recited indenture of lease, as aforesaid, with their appurtenances, were (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] advanced and paid, as in the said indenture now in recital is mentioned), demised by the said [*mortgagor*] unto the said [*mortgagee*], his executors, administrators, and assigns, for all the then residue and remainder of the said term of twenty-one years, created therein, as aforesaid, save and except the last day of the same term, which last day was to remain vested in the said [*mortgagor*], his executors or administrators, *In trust* for the said [*mortgagee*], his executors, administrators, and assigns, subject, in respect to the said [*mortgagee*], his executors, administrators, and assigns, until foreclosure or sale of the same premises, or any part thereof, as therein and hereinafter mentioned, to the payment of the rent and to the performance of the covenants and agreements in the said recited indenture of lease respectively reserved and contained, *But*, in respect to the said [*mortgagee*], his executors, administrators, and assigns, indemnified by the said [*mortgagor*], his heirs, executors, and administrators, against the said rent, covenants, and agreements, and all claims on account thereof, *And* subject also to a proviso or agreement in the said indenture now in recital contained, for redemption of the said premises, on payment," &c.

As to bargains and sales of furniture.

(*b*) As to bargains and sales of furniture on a sale, see title PURCHASE DEEDS. It is proper to observe, that little reliance can be placed on assignment of property of this kind by way of security, where the mortgagor is permitted to remain in possession, and so continue the reputed owner of them. In one case it was held, that if the assignment be only conditional, the assignor may be safely allowed to remain in possession till the condition be performed; but that, if the condition be not performed, and the assignment thereby becomes absolute, possession should be taken by the as-

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

or expressed to be made, between the said [*mortgagor*], of the first part; the said [*bargainee*], of the second part; and [A. B.], therein described, of the third part; in consideration of the sums due and owing by the said [*mortgagor*] to the said [*bargainee*], as therein is recited, and for the better securing the payment thereof, and for the nominal consideration therein mentioned, the said [*mortgagor*] did give, grant, bargain, and sell unto the said [*bargainee*], his executors, administrators, and assigns, *All* the articles of plate, linen, and china, books, furniture, fixtures, and effects, household-stuff and implements of household, and all other goods, chattels, and effects whatsoever, of and belonging to the said [*mortgagor*], then in and about the said messuage or tenement and premises hereinafter described, and intended to be hereby demised, and so comprised in and demised by the said indenture of lease, as aforesaid, or any part thereof (which articles, goods, and chattels, were the same articles, goods, and chattels as are specified and contained in the schedule hereunder written), *And* the full and whole right, property, interest, claim, and demand whatsoever, of him, the said [*mortgagor*], either at law or in equity, in and to the same, *To hold* the same unto the said [*bargainee*], his executors, administrators, and assigns, upon certain trusts therein expressed, for securing the payment unto the said [*bargainee*], his executors, administrators, or assigns, of the sum of pounds, by the instalments therein particularly mentioned, *And* subject thereto, for the benefit of the said [*mortgagor*], his executors, administrators, and assigns; *And* by the said indenture now in recital, it was declared and agreed that the said [A. B.] should and might be and remain in and upon the said messuage or tenement and premises, and retain and hold possession of the said articles, goods, chattels, and effects thereinbefore bargained and sold, as the agent of the said

---

signee. *Armstrong* v. *Baddock*, 1 Gow. 35; see also *Wooderman* v. *Baldock*, 8 Taun. 676; *Reed* v. *Blades*, 5 Taun. 212; *Hoffman* v. *Pitt*, 5 Esp. N. P. C. 25. As to mortgages of fixtures, see also Mr. Amos's useful work on Fixtures.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

[*bargainee*], until the said sum of pounds, together with all costs, charges, damages, and expenses which should be paid, incurred, or sustained by the said [*bargainee*], his executors, administrators, or assigns, in or about the execution of the trusts thereby reposed in him and them, should have been fully paid and satisfied, or until the said articles, goods, chattels, and effects should be sold and disposed of in pursuance and performance of the trusts and powers thereinbefore contained; AND WHEREAS the said sum of pounds, so secured unto the said [*bargainee*] by the said lastly hereinbefore-recited indenture, as aforesaid, has, by reason of various payments which have from time to time been made on account thereof by the said [*mortgagor*] to the said [*bargainee*], become reduced to the sum of pounds, which sum still remains due, together with the further sum of pounds, for interest thereon, making together the sum of pounds, as the said [*mortgagor*] and [*bargainee*] do hereby respectively admit and declare; AND WHEREAS the said [*bargainee*], having required payment of the said sum of pounds, so due to him as aforesaid, and it not being convenient for the said [*mortgagor*] immediately to pay the same, the said [*mortgagor*] hath applied to and requested the said [*mortgagee*] to advance and lend him the sum of pounds, to enable him to pay off the said sum of pounds, so due to the said [*bargainee*], and to answer his other occasions, which he, the said [*mortgagee*], hath agreed to do on having the repayment thereof, with interest for the same after the rate of 5*l.* per cent. per annum, secured by a demise of the leasehold messuages or tenements and premises hereinafter described, and their appurtenances; *And* also by an assignment of the said articles, goods, chattels, and effects, so bargained and sold unto the said [*bargainee*] as aforesaid, and otherwise, as hereinafter appears; NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain, by the said [*mortgagee*] to the said [*bargainee*] in hand well and truly paid, at or before the execution of these presents, at the instance and request of the said

That there is now due on the security of the last indenture the sum of *l.*

and the agreement by the mortgagee to pay it off and make a further advance.

First witnessing part.

Demise of the leasehold premises.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

[*mortgagor*], testified by his execution of these presents (the receipt of which said sum of pounds the said [*bargainee*] doth hereby admit, and doth declare that the same is in full of all monies secured to him by the said lastly hereinbefore-recited indenture, and of and from the same sum and every part thereof doth hereby acquit, release, and for ever discharge the said [*mortgagor*] and [*mortgagee*] respectively, and their respective heirs, executors, administrators, and assigns), *And* also in consideration of the sum of pounds of like lawful money, by the said [*mortgagee*] to the said [*mortgagor*] in hand well and truly paid at the same time (the receipt of which said sum of pounds, and the payment of the said sum of pounds (making together the sum of pounds), the said [*mortgagor*] doth hereby admit, and of and from the same sum and every part thereof respectively doth hereby acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns), He, the said [*mortgagor*], *Hath* granted, bargained, sold, and demised, *And* by these presents *Doth* grant, bargain, sell, and demise, unto the said [*mortgagee*], his executors, administrators, and assigns, All that piece or parcel of ground situate and being, &c. (*parcels as in the recited lease*), together with, &c. (*general words*), To have and to hold the said piece or parcel of ground, messuage, or tenement, coachhouse, stable, and all and singular other the premises hereinbefore described, and hereby demised or intended so to be, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for and during and unto the full end and term of years, (*c*) to be computed

(*c*) Instead of making the demise for the term created by the original lease except the last day or two, it is more technical and correct to grant it for the same number of years, but to make the derived term commence a day or two earlier than the original term, by which means the former will also expire a day or two sooner than the latter. It is to be remembered that the mortgagor retains not merely an estate for a day or two, but his whole term, subject to the under-lease, which is concurrent with it, except as to the last day or two; and that, though a surrender of the original lease will not avoid the under-lease, yet a *forfeiture* of it will have that effect. This last circumstance is the principal objection to a mortgage of leaseholds by *demise*, and deserves more consideration than it generally receives in practice.

As to proper *habendum* in a demise.

Chief objection to mortgage by demise.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

from the day of , and from thence next ensuing, and fully to be complete and ended, yielding and paying therefore the yearly rent of one peppercorn, if the same shall be lawfully demanded; *But* nevertheless under and subject to the provisoes, agreements, and declarations, expressed and contained of and concerning the same; AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and further performance of the said agreement, and for the considerations hereinbefore mentioned (*and a nominal consideration to the bargainee*), HE, the said [*bargainee*], at the instance and request of the said [*mortgagor*] (so testified as aforesaid), *Hath* bargained, sold, and assigned, *And* by these presents *Doth* bargain, sell, and assign; *And* the said [*mortgagor*] *Hath* given, granted, bargained, sold, assigned, and confirmed, *And* by these presents *Doth* give, grant, bargain, sell, assign, and confirm, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL the said articles of plate, linen, and china, books, furniture, pictures, fixtures, and effects, household stuff, and implements of household and all other goods, chattels, and effects whatsoever, of and belonging to the said [*mortgagor*], which, by the said lastly hereinbefore-recited indenture, were bargained and sold unto the said [*bargainee*], as aforesaid, and which are now in or about the said messuage or tenement and premises, hereinbefore demised, and particularly specified and contained in the schedule hereunder written or hereunto annexed; *And* all the right, &c. TO HAVE AND TO HOLD the said articles, goods, chattels, effects, and all and singular other the premises hereby assigned, or intended so to be, and every part thereof, unto the said [*mortgagee*], his executors, administrators, and assigns, absolutely and as his and their own goods and chattels, freed, exonerated, and for ever discharged of and from the trusts and purposes in and by the said lastly hereinbefore-recited indenture expressed and declared of and concerning the same; *But* nevertheless under and subject to the provisoes, declarations, and agreements expressed and contained of and concerning the same; (*covenant from bargainee that he has done no act to incumber*); PROVIDED ALWAYS, and, &c., that if the said [*mortgagor*], his executors, adminis-

Second witnessing part.

Assignment of the household furniture, &c.

Covenant against incumbrances.

trators, or assigns, shall and do, on or before the day of , which will be in the year of our Lord 1830, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the full and just sum of pounds of lawful money of Great Britain, *And* shall and do pay to him or them interest for the same after the rate of 5*l.* for every 100*l.* by the year, by two equal half-yearly portions, on the day of now next ensuing, and the day of 1830, *And* shall and do make the said payments without any deduction or abatement out of the same or any part thereof on account of taxes, or on any other account or pretence whatsoever, *And* do and shall in the meantime well and truly pay, or cause to be paid, the rent reserved and made payable to the said [X. Y.] by the said hereinbefore-recited indenture of lease, and all taxes and other assessments charged on the said hereby demised premises; *Then,* and in such case, he, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, thereupon or at any time thereafter, upon the request and at the expense of the said [*mortgagor*], his executors, administrators, or assigns, assign the said messuage or tenement, and other premises hereby demised or intended so to be, with their appurtenances, unto the said [*mortgagor*], his executors, administrators, and assigns, for all the residue which shall be then unexpired of the said term hereby granted, in order that the same term may merge and be extinguished in the reversion of the said premises; *Or* otherwise assign the same premises to some other person or persons, so as to keep the same term on foot, as he or they shall order or direct; *And* also shall and will, upon the like request and at the like expense, re-assign the said articles, goods, chattels, effects, and premises, hereby assigned or intended so to be, unto the said [*mortgagor*], his executors, administrators, or assigns, or as he or they shall order or direct, discharged from all incumbrances made, done, or committed by the said [*mortgagee*], his executors, administrators, or assigns, in the meantime; PROVIDED ALWAYS, and, &c., that in case default shall happen to be made in payment of the said sum of pounds, or the interest thereof, or any part thereof respec-

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

Proviso for redemption on payment of the money in a year, and the interest half-yearly.

Power of sale in case of default.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

tively, on or at the days or times hereinbefore mentioned and appointed for payment thereof, or in case default shall be made in payment of the rent and taxes hereinbefore mentioned, *Then* and in such case, and at any time thereafter, the said [*mortgagee*], his executors, administrators, or assigns, shall and may, of his or their own authority, and without the consent or concurrence of, or any further power from the said [*mortgagor*], his executors, administrators, or assigns, being in anywise necessary thereto, make sale, and absolutely dispose of the said leasehold messuage or tenement and premises, articles, goods, chattels, and effects hereby respectively demised and assigned, or intended so to be, and their appurtenances, or any of them, either together or in parcels, and either by public auction or by private contract, to any person or persons whomsoever, who shall be willing to become the purchaser or purchasers thereof, for the most money and best price or prices that at the time or respective times of such sale or sales can be reasonably obtained for the same, and assign or deliver the same unto the purchaser or purchasers thereof, or as he, she, or they shall direct; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the said [*mortgagee*], his executors, administrators, or assigns, do and shall, with and out of the monies to arise and be produced by or from such sale or sales as aforesaid, in the first place pay and discharge all the costs, charges, and expenses which shall be incurred in or about the preparing for and making and completing such sale or sales, or in enforcing the performance of any contract or contracts to be entered into for the sale of the said hereby demised and assigned premises, or any part thereof, or in procuring the same to be rescinded, and all other the expenses of him the said [*mortgagee*], his executors, administrators, or assigns, in or about the execution of the trusts or powers herein declared and contained, or in relation thereto, together with all sums payable for ground-rent, taxes, or insurance, in respect of the said premises, *And* in the next place deduct, retain, pay, and satisfy, unto himself, the said [*mortgagee*], his executors, administrators, or assigns, the said sum of pounds, and the interest thereof, hereby intended

Declaration of trust of the monies to arise from the sale.

to be secured, or such part thereof as shall then remain due and owing to him or them, *And* do and shall pay over the residue or surplus (if any) of the said sale-monies, after making the several payments and deductions aforesaid, unto the said [*mortgagor*], his executors, administrators, or assigns; *And* if any part of the said leasehold premises, articles, goods, chattels, and effects, shall remain undisposed of after payment of the said sum of pounds and interest, and of all such costs, charges, and expenses, as aforesaid, *Then* do and shall, upon the request and at the expense of the said [*mortgagor*], his executors, administrators, or assigns, re-assign all such parts thereof as shall so remain undisposed of, in the manner before stipulated in case the said sum of pounds and interest should be paid off and discharged on or at the days or times hereinbefore mentioned and appointed for the payment thereof; PROVIDED ALWAYS, and, &c., that in the mean time, and until default shall be made in payment of the said sum of pounds and interest, or some part thereof, contrary to the true meaning of these presents, the said [*mortgagee*], his executors, administrators, or assigns, shall permit and suffer the said [*mortgagor*], his executors, administrators, and assigns, to hold and enjoy, and receive and take, the rents, issues, and profits of the said articles, goods, chattels, and effects hereinbefore assigned or intended so to be, for his or their own use and benefit; AND IT IS HEREBY DECLARED AND AGREED, by and between the said parties to these presents, and particularly the said [*mortgagor*] doth direct, that all and every sale or sales which shall be made, and contract and contracts for sale and sales which shall be entered into, and assignment and assignments, or other assurances which shall be executed by the said [*mortgagee*], his executors, administrators, or assigns, of or concerning all or any part of the said leasehold premises, articles, goods, chattels, and effects, hereby respectively demised and assigned, or intended so to be, shall be as binding and conclusive upon the said [*mortgagor*], his executors and administrators, as if the same had been made, entered into, and executed by him or them; *And* that his or their joining or concurring in any such sale or sales, contract or contracts, as-

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

Proviso for quiet enjoyment by the mortgagor until default.

Declaration that sales by the mortgagee shall be binding on mortgagor.

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

signment or assignments, or other assurance or assurances, shall not be considered essential to the perfection thereof; PROVIDED ALWAYS, and it is hereby agreed and declared, &c. that the receipt or receipts of the said [ ], his executors, administrators, or assigns, under his or their hand or hands, shall be a good and sufficient discharge, and good and sufficient discharges, to the purchaser or purchasers of the said leasehold premises, articles, goods, chattels, and effects, or any of them, or any part thereof, and his, her, or their executors and administrators, for his, her, or their purchase money or purchase monies, or for so much thereof as in such receipt or receipts shall be expressed or acknowledged to have been received; *And* that such purchaser or purchasers, his, her, or their executors and administrators, shall, after such receipt or receipts given, be absolutely acquitted and discharged of and from the same purchase monies, and every part thereof, and shall not be answerable for any loss or misapplication thereof, or of any part thereof, or be obliged to see to the application thereof, neither shall it be necessary for him, her, or them, to inquire or be satisfied, whether the said sum of pounds, or the interest thereof, or any part thereof, are or is owing upon this present security, nor be affected by any notice, that the said sum of pounds, and interest, or any part thereof, has been paid, or that such sale or sales is or are improper or unnecessary; PROVIDED ALWAYS, and it is hereby further declared and agreed, &c. that the said [*mortgagee*], his executors, administrators, and assigns, or any of them, shall not be charged or chargeable with, or accountable for any more of the aforesaid sale-monies than he or they shall actually receive, or shall come to his or their hands, by virtue of these presents, or the trusts or powers aforesaid, nor with or for any loss which shall happen of the said monies, or any part thereof, so as such loss happen without his or their wilful neglect or default *(Provision for insurance against fire)*; (*d*) AND the said [*mortgagor*] doth hereby, for

Clause for making the mortgagee's receipt a sufficient discharge;

and that no purchaser shall be obliged to inquire as to the necessity or propriety of the sales.

Clause, that the mortgagee shall not be answerable for losses not arising from his default.

Covenant to assign the original term, if so required by the mortgagee.

(*d*) The following covenant may be properly added in this place:—

"*And further*, that he, the said [*mortgagor*], his exe-

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, or assigns, in manner following (that is to say), that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, or some or one of them, shall and will well and truly pay, &c. *(the monies and interest, at the times aforesaid, as ante*, p. 281, 282); *And* also, that the said hereinbefore-recited indenture of lease, of the day of , is, at the time of the execution hereof, a valid and subsisting lease; *And* also, that the rent, covenants, and agreements, in and by the said indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, have been well and truly paid, observed, and performed, up to the day of the date hereof; *And* that, whilst the said sum of pounds, and the in-

Covenants from the mortgagor for payment and title.

---

cutors, administrators, or assigns, shall and will, at any time hereafter, upon the request, in writing, of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, well and effectually assign, and make over the said messuages or tenements and premises hereby demised, or intended so to be, and their appurtenances, unto the said [*mortgagee*], his executors, administrators, or assigns, or to such person or persons as he or they shall nominate and appoint in that behalf, for all the residue and remainder which shall be then to come, and unexpired, of the said term of twenty-one years, created by the said hereinbefore-recited indenture of lease, as aforesaid, subject to the like equity of redemption, powers, and authorities, as the said messuages or tenements and premises shall, for the time being, be subject and liable to, under or by virtue of these presents; *And* that, until assignment shall be made and executed, he, the said [*mortgagor*], his executors, administrators, and assigns, shall and will stand and be possessed of the said premises, for the residue and remainder of the said last-mentioned term therein, *In trust* to make and execute such assignment, when and in case the same shall be required, in manner hereinbefore mentioned."

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

terest thereof, or any part thereof, respectively, shall remain due and owing upon the security of these presents, he, the said [*mortgagor*], his executors, administrators, and assigns, shall and will well and truly pay, observe, and perform, the same rent, covenants, and agreements, as and when the same respectively shall hereafter become payable, or to be observed or performed, and save, defend, keep harmless, and indemnified, the said [*mortgagee*], his executors, administrators, and assigns, from and against the payment, observance, and performance of the same rent, covenants, and agreements, and all actions, suits, claims, and demands, at law or in equity, for or on account of the same, or any of them, or any matter or thing in anywise relating thereto; *And* also, that the said [*mortgagor*] now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, demise, assign, and confirm the said leasehold premises, articles, goods, chattels, and effects, hereby respectively demised and assigned, or intended so to be, and their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that the said leasehold premises, articles, goods, chattels, and effects, hereby respectively demised and assigned, or intended so to be, and their appurtenances, shall and may, at all times hereafter, during the continuance of this present security (but without prejudice to the trust or provision for quiet enjoyment hereinbefore contained, in favour of the said [*mortgagor*], his executors, administrators, or assigns, in the mean time, and until default shall be made in payment of the said sum of pounds, or the interest thereof, or some part thereof, respectively), be peaceably and quietly held and enjoyed, and the rents and profits received and taken by the said [*mortgagee*], his executors, administrators, or assigns, without any let, suit, trouble, hinderance, molestation, or interruption whatsoever, of, from, or by the said [*mortgagor*], his executors or administrators, or any other person or persons whomsoever; *And* that free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and discharged, or otherwise, by the said [*mortgagor*], his

heirs, executors, or administrators, well and sufficiently protected, defended, kept harmless, and indemnified of, from, and against all estates, rights, interests, liens, charges, and incumbrances whatsoever; *And also*, that he, the said [*mortgagor*], his executors and administrators, and all and every other persons and person whomsoever, rightfully claiming, or to claim, any estate, right, title, or interest, in, to, or out of the said hereby demised and assigned premises, or any part thereof, shall and will, at all times hereafter, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, at the costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, until the said premises shall be sold, under the power or authority hereinbefore contained, and afterwards of the purchaser or purchasers of the same premises, his, her, or their executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, demises, assignments, and assurances in the law whatsoever, for the better and more perfectly and absolutely demising, assigning, assuring, and confirming the said hereby demised and assigned premises, and their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, or otherwise, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be lawfully and reasonably devised, or advised and required; And for the better and more effectually securing the payment of the interest on the said sum of pounds, hereby secured, as aforesaid, by and out of the rents, issues, and profits of the said messuage or tenement and premises, hereby demised, or intended so to be, and their appurtenances, He, the said [*mortgagor*], doth hereby attorn, (*e*)

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

Attornment to the mortgagee by the mortgagor.

(*e*) When a mortgage is made by assignment, the estate becomes vested in the mortgagee upon the execution of the deed, and without entry; and when made by demise, the estate is also vested in the mortgagee, without entry, if the premises are in the occupation of a sub-tenant, for then the

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

and become tenant to, the said [*mortgagee*], of the same messuage or tenement and premises, at the yearly rent of pounds, to be paid and payable by two equal

---

under-lease operates as a grant of the reversion of the term for the period mentioned in the demise; but if the premises are in the hands of the mortgagor, or untenanted, an entry is necessary to perfect the demise, for, in that case, till entry, the mortgagee has no estate, but merely an *interesse termini*.

Clause of attornment.

An admission, however, by the mortgagor, that he is tenant to the mortgagee, will be equivalent to an entry by the mortgagee; and, for this purpose, a clause of attornment, like the above, is often introduced at the end of a mortgage, where the mortgaged premises are in the actual occupancy of the mortgagor: more particularly as a mortgagor is not, without an express contract, liable to the mortgagee for rent, or to an action for use and occupation, as the agreement between the parties is, in construction of law, for payment of interest, and not for payment of rent. 2 Prest. Conv. 303. It is often necessary to consider the distinction here alluded to, in reference to the remedies which should be pursued, in case default is made in payment of the money secured. If the lands are let for years, or from year to year, prior to the mortgage, the lease or yearly tenancy will protect the tenant against the mortgagee, who cannot eject him or increase the rent, during the term or tenancy, although he may, after notice has been given of the incumbrance, distrain for the rent, if it should be in arrear; *Moss* v. *Gullimore*, Doug. 279, and *Alchorne* v. *Gomme*, 2 Bing. 54; but in case the lease is subsequent to the mortgage, and made without the mortgagee's concurrence, the mortgagee may eject the tenant without giving him any notice to quit, or any notice of the security. *Thunder* v. *Belcher*, 3 East, 451.

Reasons for attornment.

Attornment was necessary, at the common law, to the perfection of almost all conveyances, except when made by feoffment, or by fine; and the reasons for it are stated to have been, 1stly, That the tenant in possession might not be subjected to a new lord, without his approbation; 2ndly, That he might know to whom he was to pay his rent and render his services; and, 3rdly, That, by this means, the grantee of the reversion might be put into possession of it, and others might be aware of the transfer. Gilb. Ten. p. 41.

Attornment seldom used.

The ceremony of attornment is, however, now seldom used, as the necessity for it has been removed by the statutes 4 & 5 Anne, c. 16, and 11 Geo. II. c. 19, s. 11, the former act having declared that all conveyances should be good without it, and that tenants should not be prejudiced by payment of rents to their old landlords, till they had had notice of their new ones; and the latter having declared that all attornments should be void, except such as were made in consequence of some judgment at law or decree in equity, or made with the privity of the landlord or lessor, *or to any mortgagee, after the mortgage is become*

half-yearly portions, on the day of , and the day of , in every year, while he shall be permitted to remain such tenant, and while any monies shall continue on this present security. IN WITNESS, &c. (*f*)

DEMISE OF LEASEHOLDS AND ASSIGNMENT OF FURNITURE, &c.

---

*forfeited.* In practice, actual attornments are seldom made, except to receivers; to lessors in ejectments, for the purpose of saving sheriff's poundage, and other expenses incident to the execution of writs of possession; and to mortgagees, when the mortgagors remain in possession. As notice, by a mortgagee, of his incumbrance, to any other tenant, is equivalent to an attornment, a *formal* attornment is in that case scarcely ever required by the mortgagee. When it is required, the following form may be used:

When attornment is necessary.

"BE IT REMEMBERED, that I [A. B.], of, &c. tenant in the possession of a certain farm and lands, called , situate at , in the county of , under a lease from [*mortgagor*], at the yearly rent of pounds, do hereby attorn tenant for the whole of the same premises, to [*mortgagee*], of, &c.; *And*, in testimony of such attornment, I have this day paid into the hands of the said [*mortgagee*] the sum of 6*d.* on account of my accruing rent. Dated this day of ."

[*Tenant.*]

Memorandum of attornment by a tenant to a mortgagee.

(*f*) A memorandum of the delivery of possession of the furniture, and other chattels, should be indorsed. See Index, FURNITURE.

FURTHER CHARGE ON LEASEHOLDS.

FURTHER CHARGE *on* LEASEHOLD *Premises, for securing a sum of pounds, owing to the mortgagee, and a sum of pounds now lent by him; with* PROVISIONS *for Insurance against damage by Fire, and for permitting the Money secured to remain uncalled in for a period of five years, in case the* INTEREST *should be paid half-yearly: (Indorsed on the mortgage-deed.)* (*a*)

Parties.

THIS INDENTURE, made the day of August, 1829, BETWEEN the within-named [*mortgagor*], of the one part; and the within-named [*mortgagee*], of the other part:

Recites that the principal sum secured is still due, but that all interest has been paid;

WHEREAS the principal sum of pounds, secured by the within-written indenture, is still due and owing, but all interest which hath become due for the same up to the 1st day of April now last past hath been duly paid or satisfied, as they, the said [*mortgagor*] and [*mortgagee*] do hereby respectively admit and declare;

that, upon a balance of accounts, there is found due from mortgagor to mortgagee, exclusively of the principal money and interest secured by the within deed, the sum of *l.*;

AND WHEREAS, upon a balance of accounts this day made between the said [*mortgagor*] and [*mortgagee*], there has been found to be due from the said [*mortgagor*] to the said [*mortgagee*], exclusively of the said sum of pounds, secured by the said within-written indenture, and the interest thereon, as from the said 1st day of April now last past, the sum of pounds, of lawful money of Great Britain and Ireland, as he, the said [*mortgagor*], doth hereby admit and acknowledge;

that mortgagee, at the request of mortgagor, has agreed to lend him a further sum of *l.*, on having the

AND WHEREAS the said [*mortgagee*] hath agreed, at the request of the said [*mortgagor*], to lend him a further sum of pounds, upon having the repayment of the same, and also of the said sum of pounds, which has been so found due

(*a*) For a deed of further charge on freeholds, see *ante*, p. 289.

from the said [*mortgagor*] to the said [*mortgagee*], as aforesaid (making together the sum of pounds), with interest for the same respectively, after the rate of 5*l.* for 100*l.* by the year, secured at the time and in manner hereinafter mentioned, by the covenant of the said [*mortgagor*], hereinafter firstly contained, *And* by a charge upon the piece or parcel of land, messuage, warehouses, and premises comprised in and assigned by the said within-written indenture, and their appurtenances, and the warehouses and other buildings which have been since erected and built upon part of the same land and premises; AND WHEREAS, upon the treaty for the said loan, it was agreed that the said [*mortgagor*] should make such provision for the insurance of the said messuage, warehouses, and buildings, against loss or damage by fire, as is hereinafter expressed; *And* that the said [*mortgagee*] should enter into the covenant hereinafter on his part contained; AND WHEREAS, in pursuance and part performance of the said agreement, the said [*mortgagee*] hath this day lent and paid to the said [*mortgagor*] the sum of pounds, of lawful money of Great Britain and Ireland, as he, the said [*mortgagor*], doth hereby admit and acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, and for securing the payment of the said sums of pounds and pounds, so respectively found due from and lent to the said [*mortgagor*], as aforesaid, with interest, as hereinbefore is mentioned, HE, the said [*mortgagor*], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will, on the day of now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, and assigns, the sum of pounds, of lawful money of Great Britain, together with interest for the same after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, without any deduction or abate-

FURTHER CHARGE ON LEASEHOLDS.

repayment thereof, and also of the sum of *l.* so found due as aforesaid, with interest secured,

by the covenant of the mortgagor, and by a charge upon the premises comprised in the within deed.

That, upon the treaty for the loan of the said sum, it was agreed that mortgagor should make such provision for insurance of the premises as after expressed; and that the mortgagee should enter into the covenants hereinafter on his part contained.

That, in part performance of the said agreement, mortgagor has paid to mortgagee the sum of *l.*

First witnessing part.

Mortgagor covenants with mortgagee for the payment of the sums of *l.* and *l.* so found due and lent, as aforesaid, with interest at 5*l.* per cent., on the day of now next.

FURTHER CHARGE ON LEASEHOLDS.

ment out of the same sum and interest, or any part thereof, for or on account of any present or future taxes, rates, charges, assessment, or impositions, or any other matter, cause, or thing whatsoever; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and for the consideration hereinbefore expressed, HE, the said [*mortgagor*], *Doth*, by these presents, subject and charge the said piece or parcel of land, messuage, warehouses, and premises, in the said within-written indenture described, and thereby assigned, and their appurtenances, *And* all and singular the warehouses and buildings which have been since erected and built on part of the same land and premises, to and with the payment to the said [*mortgagee*], his executors, administrators, and assigns, of the said sum of pounds and interest, hereby covenanted to be paid to him and them, as aforesaid; *And* declare and agree that the same piece or parcel of land, messuage, warehouses, buildings, and premises, and their appurtenances, shall not be redeemed or redeemable until payment, as well of the said sum of pounds and the interest thereof, as of the said sum of pounds, secured by the said within-written indenture, as aforesaid, and the interest thereof, *And* that the power of sale in the said within-written indenture contained, shall extend to and may be exercised for raising, as well the said sum of pounds and interest, hereby secured, as the said sum of and interest secured by the said within-written indenture; AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, further covenant, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following (that is to say), that he, the said [*mortgagor*], hath not sold, mortgaged, disposed of, charged, incumbered, or in any way prejudicially affected the said piece or parcel of land, messuages, warehouses, buildings, and premises, comprised in and assigned by the said within-written indenture, or any of them, or any part thereof, or the within-mentioned term of years therein, save and except as appears by the said within-written indenture; *And* that he, the said [*mortgagor*], his

Second witnessing part.

The mortgagor charges the premises comprised in the within deed with the payment of the said sum and interest so covenanted to be paid, as aforesaid;

and declares that the same premises shall not be redeemable until payment of the said sum and interest, as well as of the said sum of *l.* and interest, secured by the within deed.

Covenant by the mortgagor that he has not incumbered the premises.

And for further assurance.

executors and administrators, and all other persons whosoever, having or claiming, or who shall or may hereafter have or claim, any estate, right, or interest whatsoever, either legal or equitable, in, to, out of, or upon the said piece or parcel of land, messuages, warehouses, buildings, and premises, comprised in and assigned by the said within-written indenture, or any of them, or any part thereof, shall and will, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, make, do, and execute, or cause to be made, done, and executed, all such acts, deeds, and assurances in the law whatsoever for the further, better, and more perfectly and absolutely charging and securing the said sum of pounds, and the interest thereof, on the said piece or parcel of land or ground, messuage, warehouses, buildings, and premises, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required; *And further*, that while any monies shall remain due on the security of these presents, the said [*mortgagor*], his executors, administrators, or assigns, shall and will, at his and their own expense, insure and keep insured the messuage, warehouses, and buildings hereinbefore mentioned, in some respectable office or offices of insurance in London or Westminster, against loss or damage by fire, in the name or names of the said [*mortgagee*], his executors, administrators, or assigns, for the sum of pounds at the least, *And* shall and will, whenever thereunto required, produce and shew forth, or cause to be produced and shewn forth, unto the said [*mortgagee*], his executors, administrators, or assigns, the policy or policies by which such insurance or insurances shall be effected, together with the last receipt or receipts given for the premium or premiums payable thereon, *And* that, if he, the said [*mortgagor*], his executors, administrators, or assigns, shall at any time neglect or refuse so to do, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to insure and keep insured the same messuage, warehouses, and buildings, in such office or offices, and

FURTHER CHARGE ON LEASEHOLDS.

Also, to insure the premises against damage by fire in the sum of *l.* at the least;

and to produce the policy and receipts for premiums payable thereon.

And that, on his neglect or refusal so to do, it shall be lawful for mortgagee to insure the premises in any sum not exceeding *l.*

FURTHER CHARGE ON LEASEHOLDS.

name or names, as aforesaid, in any sum or sums of money he or they shall think fit, not exceeding in the whole the sum of pounds, *And* that the said piece or parcel of land, messuage, warehouses, buildings, and premises, hereby charged, as aforesaid, and their appurtenances, shall be and are hereby charged and made chargeable with the repayment, to the said [*mortgagee*], his executors, administrators, or assigns, of all such sum or sums of money as shall be advanced or paid by him or them for such insurance as aforesaid, with interest for the same after the rate of 5*l.* for 100*l.* by the year, to be computed from the time or respective times of advancing or paying the same;

And the premises shall be charged with the repayment of all sums of money paid by mortgagee for such insurance, with interest from the time of paying the same.

Declaration that all sums of money received by virtue of such insurance, shall be applied in reinstating the premises, or in discharging the principal monies and interest secured as aforesaid;

and the surplus, in either case, to be paid to mortgagor, his executors, &c.

And it is hereby agreed and declared, between and by the said parties hereto, that all such sum or sums of money as shall be recovered or received by virtue of any such insurance, as aforesaid, shall be applied either in rebuilding, repairing, and reinstating the buildings and premises which shall for the time being be destroyed or damaged by fire, as aforesaid, or in paying and discharging the principal monies and interest for the time being due and owing on the security of the said within-written indenture, and these presents, as the said [*mortgagee*], his executors, administrators, or assigns, shall order or direct, and the surplus or residue of the said monies shall in either case be paid to the said [*mortgagor*], his executors, administrators, or assigns. And this indenture lastly witnesseth, that in pursuance and further performance of the said agreement, and in consideration of the premises, He, the said [*mortgagee*], *Doth* hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*mortgagor*], his executors, administrators, and assigns, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, or any of them, shall and do, on the 1st day of October now next ensuing, and on every 1st day of April and 1st day of October which will be in the years 1831, 1832, 1833, 1834, and 1835, or within one calendar month next after each of the said days respectively, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, half a year's interest on the said sum of

Third witnessing part.

Covenant by the mortgagee, that if mortgagor pays interest half-yearly, he will not compel payment of the principal money hereby secured, or exercise the power of sale contained in the within deed,

pounds, secured by the said within-written indenture, after the rate of 5*l.* for 100*l.* by the year, *And* shall and do, on every day of February and day of August which will be in the years 1831, 1832, 1833, 1834, and 1835, or within one calendar month next after each of the said days respectively, well and truly pay, or cause to be paid, unto the said [~~*mortgagor*~~], his executors, administrators, or assigns, half a year's interest on the said sum of pounds, hereby secured, after the rate of 5*l.* for 100*l.* by the year, without any deduction or abatement whatsoever; *Then*, and in such case, he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall not nor will, before the day of , which will be in the year of our Lord 1835, call in or compel payment of the said sum of pounds, secured by the said within-written indenture, or the said sum of pounds, hereby secured, or any part thereof respectively, or exercise the power of sale in the said within-written indenture contained; *Nor* shall the said [*mortgagor*], his heirs or assigns, before the 1st day of , which will be in the year of our Lord 1835, be interrupted or disturbed by the said [*mortgagee*], his executors, administrators, or assigns, or any of them, or any person or persons whomsoever, lawfully or equitably claiming or to claim, by, from, through, under, or in trust for him, them, or any of them, in the possession and enjoyment, or the receipt, of the rents, issues, and profits of the said piece or parcel of land, messuage, warehouses, buildings, and premises comprised in and assigned by the said within-written indenture, and their appurtenances, or any of them, or any part thereof. IN WITNESS, &c.

FURTHER CHARGE ON LEASEHOLDS.

before the day of ; or before that time, interrupt or disturb mortgagor in the possession and enjoyment of the premises.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

CONVEYANCE *of* FREEHOLDS *and* COVENANT *to* SURRENDER COPYHOLDS, *for securing, by way of* MORTGAGE, *a sum of pounds, advanced by the* TRUSTEES *of a Marriage Settlement, with interest for the same, at 5l. per cent., where the Estate mortgaged was subject to certain* ANNUITIES *and* PORTIONS *payable to the Mortgagor's* MOTHER *and younger* BROTHERS, *who joined in the* SECURITY, *for the purpose of giving to the Mortgagees* PRIORITY *of payment: the Trustee of the* TERM *created for securing the Annuities and Portions, assigning it, by direction of the Mother and Brothers, to a* TRUSTEE *for the* MORTGAGEES.

Parties.

THIS INDENTURE, made the day of , BETWEEN [*mortgagor*], of, &c. of the first part; [*trustees of the copyholds, as hereinafter mentioned*], of, &c. of the second part; [*mortgagees*], of, &c. of the third part; [*mother of mortgagor*], of, &c. of the fourth part; [*eldest brother of mortgagor*], of, &c. of the fifth part; [*youngest brother of mortgagor*], of, &c. of the sixth part; [*trustees of the term of five hundred years, hereinafter mentioned*], of, &c. of the seventh part; and [*assignee of the same term*], of, &c. of the eighth part: WHEREAS, by indentures of lease and release, bearing date respectively the and days of October, 1816, the release being made, or expressed to be made, between [A. B.], of, &c. gent., of the first part; [*father of mortgagor*], of, &c. esq., of the second part; and [X. Y.] and [Y. Z.], therein respectively described, of the third part; the said [A. B.] did, in pursuance of the contract or agreement for sale therein

Recites the conveyance of the freeholds to the father of mortgagor, subject to a term of one thousand years, to the vendor, for securing part of the purchase-money;

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

recited, and for the considerations therein mentioned, grant and convey unto the said [*father of mortgagor*], and his heirs, the freehold lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and their appurtenances, *To hold* the same unto the said [*father of mortgagor*], and his heirs, *To the uses* following, (that is to say); *To the use* of the said [A. B.], his executors, administrators, and assigns, for and during the term of one thousand years, to be computed from the day of the date of the said indenture of release, and thenceforth next ensuing, and fully to be complete and ended without impeachment of or for any manner of waste; *But* subject, nevertheless, to a proviso or condition for making void the said term in the said indenture of release contained, and hereinafter mentioned; *And*, from and after the expiration or sooner determination of the said term, *And* in the mean time, subject thereto; *To such uses*, upon such trusts, and in such manner, as the said [*father of mortgagor*] should at any time thereafter, by any deed or deeds, or instrument or instruments, in writing, to be by him sealed and delivered in the presence of, and attested by, two or more credible witnesses, direct, limit, or appoint; *And*, in default of and until such direction, limitation, or appointment, *And* subject thereto, *To the use* of the said [*father of mortgagor*], and his assigns, &c. (*usual uses to bar dower, as ante*, 302); *And* by the said indenture of release it was provided, agreed, and declared, that if the said [*father of mortgagor*], his heirs, executors, administrators, or assigns, should pay, or cause to be paid, to the said [A. B.], his executors, administrators, or assigns, the sum of 5000*l.*, with interest for the same after the rate of 5*l.* for 100*l.* by the year, on the day of April, which would be in the year 1817, the said term of one thousand years should thereupon absolutely cease, determine, and be void. And whereas, at a court baron held in and for the manor of , in the said county of , on the 10th day of November, 1816, the said [A. B.] did, in consideration of the sum of pounds to him paid by the said [*father of mortgagor*], duly surrender into the hands of the lord of the same manor, by the rod,

The surrender of the copyholds to trustees, for the father of mortgagor, by the vendor.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

the copyhold or customary lands, hereditaments, and premises, hereinafter described, and hereby covenanted to be surrendered, and their appurtenances, *To the use* of the said [X. Y.] and [Y. Z.], (*a*) their heirs and assigns, for ever, at the will of the lord, and, according to the custom of the said manor, by the rents and services therefore due and of right accustomed; *But In trust* nevertheless for the said [*father of mortgagor*], his heirs and assigns, for ever; *And* at the same court the said [X. Y.] and [Y. Z.] were duly admitted tenants to the same copyhold or customary lands, hereditaments, and premises, and their appurtenances, accordingly; AND WHEREAS, at the said court so held as aforesaid, the said [X. Y.] and [Y. Z.] did, at the request of the said [*father of mortgagor*], duly surrender into the hands of the lord of the said manor, by the rod, the said copyhold or customary lands, hereditaments, and premises hereinafter described, and hereby covenanted to be surrendered, and their appurtenances, *To the use of* the said [A. B.], his heirs and assigns, for ever, at the will of the lord, and according to the custom of the same manor, by the rents and services therefore due and of right accustomed, *But* subject, nevertheless, to a condition in the said surrender now in recital contained, for making void the same on payment, by the said [*father of mortgagor*], his heirs, executors, administrators, or assigns, to the said [A. B.], his executors, administrators, or assigns, of the sum of 5000*l.*, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, on the day of April, 1817, (being the same sum and interest as were secured by the said hereinbefore-recited indentures of lease and release, of the and days of October, 1816, as aforesaid); AND WHEREAS, by a memorandum under the hand of the said [A. B.], bearing date the day of November, 18 , the said [A. B.] did authorize the steward of the said manor

The re-surrender thereof to the vendor, for further securing the unpaid purchase-money.

Warrant to vacate conditional surrender.

(*a*) The mortgagor's father was the lord of the manor, and the copyholds were therefore surrendered to trustees for him, to prevent the copyhold interest being extinguished in the freehold interest.

of , or his deputy, to enter satisfaction on the rolls of the same manor, on the therein and hereinbefore recited surrender of the 10th day of November, 1816, *And* satisfaction was duly entered thereon pursuant to the said authority; (*b*) AND WHEREAS, by indentures of lease and appointment and release, bearing date respectively the 30th and 31st days of July, 1821, the appointment and release being made, or expressed to be made, between the said [*father of mortgagor*] and [*mother of mortgagor*], of the first part; the said [*mortgagor*], of the second part; the said [*trustees of the copyholds*] (*c*), of the third part; [*trustees of a term of ninety-nine years hereinafter mentioned*] of the fourth part; and the said [*trustees of the term of five hundred years*], of the fifth part, the said [*father of mortgagor*] did, for the reasons and considerations therein mentioned, appoint and convey the said freehold lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances (amongst and together with other hereditaments), *To the uses*, upon the trusts, and with and subject to the powers and provisions in the said indenture of appointment and release now in recital declared and contained concerning the same, and hereinafter in part mentioned (that is to say), *To the use* and intent that the said [*mortgagor*] might, during the joint lives of himself and the said [*father of mortgagor*], receive and take out of the said hereditaments and premises an annual sum or yearly rent of 500*l.*, to be paid by equal half-yearly portions, on the days in the said indenture of appointment and release now in recital mentioned, with the usual powers and remedies for recovering the same annual sum or yearly rent, when and in case the same or any part thereof should be in arrear; *And* subject to the said annual sum or yearly rent of 500*l.*, and the powers and remedies given for the recovery thereof, *To*

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

Indentures of lease and appointment and release, whereby the freehold premises were (subject to the mortgage to A. B.) conveyed to the following uses, viz.:

To the use that mortgagor might receive an annual rent of 500*l.* during the joint lives of himself and his father, with the usual powers of entry, &c.;

(*b*) For forms of such acknowledgment of satisfaction, see *ante*, p. 364.

(*c*) These gentlemen were trustees of other freehold estates, which, by this conveyance, were directed to be sold, and also covenantees in the covenant to surrender copyholds, recited, *post*, p. 412—13.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

*the use* of the said [*trustees for the term of ninety-nine years*], their executors, administrators, and assigns, for and during the term of ninety-nine years, to be computed from the day of the date of the said indenture of appointment and release now in recital, and thenceforth next ensuing, and fully to be complete and ended, *But* nevertheless upon the trusts and subject to the proviso in the same indenture declared and contained of and concerning the same, and hereinafter mentioned; *And*, from and after the expiration or sooner determination of the said term of ninety-nine years, *And* in the mean time, subject thereto and to the trusts thereof, *To the use* and intent that the said [*mother of mortgagor*], in case she should survive the said [*father of mortgagor*], might receive and take out of the said hereditaments and premises, after his decease and during the remainder of her life, an annual sum or yearly rent of 650*l.* for her jointure, and also during the joint lives of herself and the said [*eldest brother of the mortgagor*], and [*youngest brother of mortgagor*], (her two younger sons), a further annual sum or yearly rent of 600*l.* for the better support of herself and the said [*eldest brother of mortgagor*], and [*youngest brother of mortgagor*]; *And*, in case either of her said two younger sons should die in her lifetime, then, during the joint lives of herself and her surviving younger son, an annual sum of 300*l.* for the better support of herself and such surviving younger son, the said annual sums or yearly rents of 650*l.* and 600*l.* or 300*l.* (as the case might be), to be respectively paid by two equal half-yearly portions, on the days in the said indenture of appointment and release now in recital mentioned, with the usual powers and remedies for recovering the said annual sums or yearly rents, when and in case the same or any part thereof respectively should be in arrear and unpaid, *And* subject and without prejudice to the said last-mentioned annual sums or yearly rents, and to the powers and remedies given for recovering the same, *To the use* of the said [*trustees of the term of five hundred years*], their executors, administrators, and assigns, for and during the term of five hundred years, to be computed from the day of the date of the said indenture of appointment and release now in recital, and thenceforth next

And, subject thereto to the use of trustees for a term of ninety-nine years, upon the trusts after mentioned;

Remainder, to the use that the mother of mortgagor might receive an annual rentcharge of 650*l.* for her jointure.

Also, a further annuity of 600*l.* during the joint lives of herself and two younger sons.

And, on the death of either of the younger sons in her lifetime, an annuity of 300*l.* during the joint lives of herself and the surviving younger son, with the usual powers of entry, &c.

And, subject thereto, to the use of trustees for a term of five hundred years, upon the trusts after mentioned.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

ensuing and fully to be complete and ended; *But* nevertheless upon the trusts and subject to the proviso in the same indendure declared and contained of and concerning the same and hereinafter mentioned; *And*, from and after the expiration or sooner determination of the said term of five hundred years, *And* in the mean time subject thereto and to the trusts thereof, *To the use* of such person or persons, for such estate or estates, and in such manner, as the said [*father of mortgagor*] and [*mortgagor*] should, at any time or times, by any deed or writing to be by them executed, as in the said indenture of appointment and release now in recital is mentioned, jointly direct, limit, or appoint; *And*, in default of, and until such joint direction, limitation, or appointment, *And*, subject thereto, *To the use* of the said [*father of mortgagor*] and his assigns, during his life, with remainder *To the use* of the said [*mortgagor*], his heirs and assigns, for ever; *And*, by the said indenture of appointment and release now in recital, it was declared, that the said lands, hereditaments, and premises, thereby limited to the use of the said [*trustees of the term of ninety-nine years*], their executors, administrators, and assigns, for the said term of ninety-nine years, as aforesaid, and their appurtenances, were so limited to them *Upon trust*, that they, the said [*trustees of the term of ninety-nine years*], or the survivor of them, or the executors, administrators, or assigns, of such survivor, should, by the ways and means in the same indenture mentioned, levy and raise, and pay to the said [*mortgagor*], or his assigns, the said annual sum or yearly rent of 500*l.* thereinbefore provided for him and them, as aforesaid, as and when the same should become payable; *And* by the same indenture it was provided, agreed, and declared, that immediately after the decease of such one of them, the said [*father of mortgagor and mortgagor*], as should first happen to die, and full payment should have been made of the said annual sum or yearly rent of 500*l.* thereinbefore provided for the said [*mortgagor*] and his assigns, as aforesaid, and of all costs and expenses attending the execution of the trusts of the said term of ninety-nine years, the same term should absolutely cease, determine, and be void; *And*, by the said

Remainder to such uses as the father of mortgagor and mortgagor should jointly appoint.

And, in default of appointment, to the use of the father of mortgagor for his life.

Remainder to the use of the mortgagor in fee.

Declaration of trust of the term of ninety-nine years, for securing the annuity limited to the mortgagor, during the joint lives of himself and his father.

Proviso for cesser of that term.

Declaration of trust of the

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

indenture of appointment and release now in recital, it was declared, that the said lands, hereditaments, and premises, thereby limited *To the use* of the said [*trustees of the term of five hundred years*], their executors, administrators, and assigns, for the said term of five hundred years, as aforesaid, and their appurtenances, were so limited to them, *Upon trust*, that they, the said [*trustees of the term of five hundred years*], or the survivor of them, or the executors, administrators, or assigns, of such survivor, should, by the ways and means in the same indenture mentioned, levy and raise, and pay to the said [*mother of mortgagor*], or her assigns, the said annual sums or yearly rents of 650*l.*, 600*l.*, or 300*l.* (as the case might be) thereinbefore provided for her and them, as aforesaid, as and when the same should respectively become payable; *And* also levy and raise, by the ways and means therein mentioned, the sum of 7000*l.*, for the portions of the younger children of the said [*father of mortgagor*], by the said [*mother of mortgagor*], to be paid and payable at such age or ages, or time or times, in such shares, and in such manner, as the said [*father of mortgagor*] and [*mother of mortgagor*] should, by any deed or writing to be by them executed, as in the said indenture of appointment and release now in recital is mentioned, jointly direct or appoint; *And*, in default of such joint direction or appointment, *And* subject thereto, as the said [*father of mortgagor*], in case he should survive the said [*mother of mortgagor*], should, by deed or will, to be by him respectively executed, as in the same indenture is mentioned, direct or appoint; *And*, in default of such last-mentioned direction or appointment, *And* subject thereto, unto and equally between or amongst all and every the said younger children, as tenants in common, as soon as conveniently might be after the decease of him, the said [*father of mortgagor*], with interest for the same, after the rate of 4*l.* for 100*l.* by the year, to be computed from the day of such decease; *And*, by the said indenture of appointment and release now in recital, the said [*father of mortgagor*] covenanted with the said [*trustees of the copyholds*], and their heirs, that he would, at the next court which should be held for the said manor of , cause and

term of five hundred years, for raising the annuities and portions for the mother and brothers of mortgagor;

and agreement to settle the copyholds in the same manner as the freeholds.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

procure the said copyhold or customary lands, hereditaments, and premises hereinafter described, and covenanted to be surrendered, and their appurtenances, to be surrendered into the hands of the lord of the said manor, *To the use* of them, the said [*trustees of the copyholds*], their heirs and assigns, at the will, &c. (as *ante*, p. 408); *But*, nevertheless, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as would nearest correspond with the uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations, thereinbefore limited, declared, and contained, of and concerning the said freehold, lands, hereditaments, and premises, thereby appointed, released, as therein and hereinbefore is mentioned, and their appurtenances (*recites an acknowledgment by* [*A.B.*] *of satisfaction, on the conditional surrender of the* 10*th day of November*, 1816, *and warrant to vacate, as ante*, p. 408); AND WHEREAS, at a court baron, held in and for the said manor of , on the day of August, 1821, the said [A. B.] did, at the request of the said [*father of mortgagor*], duly surrender, into the hands of the lord of the said manor, by the rod, the said copyhold or customary lands, hereditaments, and premises, hereinafter described and hereby covenanted to be surrendered, and their appurtenances, *To the use* of the said [*trustees of the copyholds*], their heirs and assigns, for ever, at the will of the lord, and according to the custom of the same manor, by the rents and services therefore due, and of right accustomed; *But*, nevertheless, upon the like trusts, and with and subject to the like powers and provisoes, as in and by the said hereinbefore recited indenture of appointment and release of the 31st day of July, 1821, were declared and contained of and concerning the freehold lands, hereditaments, and premises, therein comprised, and thereby appointed and released, as aforesaid, or as near thereto as circumstances would permit; AND WHEREAS the said [*father of mortgagor*] departed this life in or about the month of April, 1822, leaving the said [*mother of mortgagor*], his wife; the said [*mortgagor*], his eldest son; and the said [*eldest brother of mortgagor*]; and [*youngest brother of mortgagor*], his two younger sons, and only other children him surviving; *And* without

Acknowledgment of satisfaction on the court rolls.

Surrender by [A. B.], of the copyholds, to the trustees of the settlement, upon the same trusts as the freeholds.

Death of the father of the mortgagor, without having exercised the powers of appointment reserved by the settlement.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

having ever exercised the power of appointment given and reserved to him and the said [*mortgagor*], in and by the said hereinbefore-recited indenture of appointment and release of the 31st day of July, 1821, as aforesaid, or the said power of appointment given and reserved to him and the said [*mother of mortgagor*], by the same indenture, as hereinbefore is mentioned; AND WHEREAS, by an indenture of assignment, bearing date the day of September, 1822, endorsed on the said hereinbefore-recited indenture of the day of October, 1816, and made, or expressed to be made, between the said [A. B.] of the first part; the said [*trustees of the term of ninety-nine years*], of the second part; the said [*mother of mortgagor*], of the third part; the said [*eldest brother of mortgagor*], of the fourth part; the said [*youngest brother of mortgagor*], of the fifth part; the said [*mortgagor*], of the sixth part; and the said [*trustees of the term of five hundred years*], of the seventh part; the said [A. B.] and [*trustees of the term of ninety-nine years*], (*d*) did, at the request of the said [*mother of mortgagor*], [*eldest brother of mortgagor*], [*youngest brother of mortgagor*], and [*mortgagor*], and upon the acceptance of the said [*trustees of the term of five hundred years*] (testified as therein is mentioned), assign and surrender unto the said [*trustees of the term of five hundred years*], their executors, administrators, and assigns, the said freehold, lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and so comprised in and conveyed by the said hereinbefore-recited indentures of the day of October, 1816, and the 31st day of July, 1821, as aforesaid, and their

Assignment of the terms of one thousand years and ninety-nine years, to the intent that they may merge in the reversionary term of five hundred years.

As to assigning terms where there is a proviso for cesser in the deed or will creating them.

(*d*) Terms of years created by settlements or wills are usually made to *cease* when the trusts have become unnecessary, or been performed, and the trustee's *expenses have been paid;* but it is not usual in practice to rely on the cesser of the term under this proviso, as there may be difficulty in proving the performance of the latter part of the condition. It is much better expressly to assign or surrender the term to merge, than to allow the title to be subject to any doubt or difficulty in regard to the cesser of the term. Where the trusts of a term have been long performed, the payment of the trustee's expenses will be presumed, and a merger of the term will of course be unnecessary.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

appurtenances, *And* all the estate and interest of the said [A. B.] and [*trustees of the term of ninety-nine years*], therein or thereto, *To the end and intent* that the said terms of one thousand years and ninety-nine years, respectively created by the said last-mentioned indentures, as aforesaid, might from thenceforth be respectively merged and extinguished in the said reversionary term of five hundred years, created in the same lands, hereditaments, and premises, by the said indenture of the 31st of July, 1821, as therein and hereinbefore is mentioned; AND WHEREAS the said [*mortgagor*], having occasion for a sum of 3000*l.*, the said [*mortgagees*] have agreed, at his request, to advance and lend him the same, out of certain monies belonging to them, as joint tenants, (*e*) on having the repayment thereof, together with interest for the same after the rate of 5*l.* for 100*l.* by the year, secured to them, their executors, administrators, or assigns, on or at the days or times and in manner hereinafter mentioned, by a mortgage of the said freehold lands, hereditaments, and premises hereinafter firstly described, and intended to be hereby granted and released, and their appurtenances, *And* also of the said copyhold or customary lands, hereditaments, and premises, hereinafter

That mortgagor, having occasion for the sum of *l.*, mortgagees have agreed to lend him the same, on having the repayment thereof, with interest, secured to them by a mortgage of the freehold and copyhold lands after described, and by the covenant of mortgagor after contained;

(*e*) Where the money advanced on a mortgage is trust-money, it is usual not to disclose the trusts, or in any way refer to the deed or will creating them, in the mortgage-deed,—but merely to recite that the trustees have agreed to make the proposed advance out of monies belonging to them on a joint account, or vested in them as joint tenants. There are, however, some objections to this plan: the first is, that the expenses of a separate declaration of trusts are not allowed against the mortgagor, on the taxation of costs between him and the mortgagees—see *Martin's* case, 5 Bing. 160; the next is, that the mortgagees may be affected with notice of the trusts of the money after the mortgage is executed, and may not have the means of proving that the trustees are capable of giving an effectual discharge for the money when paid off, and which they would have required before they made the loan, if the trusts had been disclosed in the mortgage-deed; and a third is, that in most cases it becomes necessary, by the death of some of the trustees, or the appointment of new trustees, and the consequent transfer of the securities, to introduce a disclosure of the trusts of the money on the face of the title, before the money is paid off.

As to disclosing in mortgage-deed the trusts of the money lent, when advanced by trustees.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

described, and intended to be hereby covenanted to be surrendered, and their appurtenances; *And* by the covenant of the said [*mortgagor*], hereinafter in that behalf contained; And whereas, upon the treaty for the loan of the said sum of pounds, it was agreed that the said [*mother of mortgagor*], [*eldest brother of mortgagor*], and [*youngest brother of mortgagor*], should enter into the covenants hereinafter on their respective parts contained; *And* that the said term of five hundred years, created in the said freehold lands, hereditaments, and premises, hereinafter described, and intended to be hereby granted and released, and their appurtenances, by the said hereinbefore-recited indenture of appointment and release, of the 31st day of July, 1821, as aforesaid, should be assigned by the said [*assignors of the same term*], unto the said [*assignee of the same term*], his executors, administrators, and assigns, *Upon* the trusts hereinafter declared concerning the same. Now this indenture witnesseth, that, in pursuance and part performance of the said agreement, and in consideration of the sum of 3000*l.* of lawful money of Great Britain and Ireland, by the said [*mortgagees*], with and out of the monies belonging to them as joint-tenants, as aforesaid, to the said [*mortgagor*], in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt of which said sum of 3000*l.* the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*mortgagees*], and every of them, and their and every of their heirs, executors, administrators, and assigns), He, the said [*mortgagor*], *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm, unto the said [*mortgagees*] (in their actual possession, &c.), and their heirs, (*f*) All such part and parcel as is freehold and not copyhold, of *All that*, &c. (*parcels*), Together with all houses, &c.

that, upon the treaty for the loan, it was agreed that the mother and brothers of mortgagor should enter into the covenants after contained, and that the term of five hundred years should be assigned to [ ], upon the trusts after mentioned.

First witnessing part.

In consideration of *l.*, the mortgagor conveys to the mortgagees

the freehold premises.

(*d*) For different descriptions of parcels, see Index, Parcels.

(*general words*), *And* the reversion, &c.; *And* all the estate, &c., To have and to hold the said freehold lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, (*g*) unto the said [*mortgagees*] and their heirs, *To the use* of them, the said [*mortgagees*], their heirs and assigns, for ever, *But* subject nevertheless to the proviso or agreement for redemption hereinafter contained: (that is to say), Provided always, and it is hereby agreed and declared between and by the said [*mortgagor*] and the said [*mortgagees*], that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, unto the said [*mortgagees*], their executors, administrators, or assigns, the sum of 3000*l.* of lawful money of Great Britain and Ireland, together with interest, &c. (as *ante*, p. 281, n.), *Then*, and in such case, and at any time after such payments shall be so made as aforesaid, they, the said [*mortgagees*], their heirs or assigns, shall and will, upon the request and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, reconvey the said freehold lands, hereditaments, and premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*mortgagor*], his heirs and assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*mortgagees*], or any of them, or their or any of their heirs or assigns, so as for the doing thereof they, the said [*mortgagees*], or any of them, or their or any of their heirs or assigns, be not compelled or

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

*Habendum* to the mortgagees in fee, subject to the proviso for redemption.

Proviso for redemption.

---

(*g*) The following parenthesis should have come in here:—

"(subject and without prejudice to the said term of five hundred years, created by the said hereinbefore-recited indenture of appointment and release, of the 31st day of July, 1820, as aforesaid, and the trusts therein declared of the same term, save and except as hereinafter is mentioned and provided.)"

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

Second witnessing part.

compellable to go or travel from their or any of their usual places or place of abode or dwelling; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of 3000*l.*, by the said [*mortgagees*] to the said [*mortgagor*] paid, as hereinbefore is mentioned, HE, the said [*mortgagor*], ***Doth*** hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagees*], their heirs and assigns, that the said [*trustees of the copyholds*], or the survivor of them, or the heirs of such survivor, and all other necessary parties, shall and will, at the next court to be held in and for the said manor of , or out of court, (*h*) upon the request, in writing, of the said [*mortgagees*], their heirs, executors, administrators, or assigns, well and effectually surrender, or cause or procure to be surrendered, into the hands of the lord of the same manor, by the rod or otherwise, according to the custom of the same manor, ***To the use*** of the said [*mortgagees*], their heirs and assigns, ALL SUCH part and parcel as is copyhold and held of the said manor of , and not freehold, of ***All that***, &c. (*parcels*), ***To hold*** the same unto the said [*mortgagees*], their heirs and assigns, for ever, at the will of the lord, and according to the custom of the same manor, by the rents and services therefore due and of right accustomed; ***But*** subject nevertheless to a proviso or condition for making void the surrender to be made in pursuance of this present covenant or agreement, on payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagees*], their executors, administrators, or assigns, of the sum of 3000*l.*, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, on or at the days or times, and in manner, hereinbefore mentioned and appointed for the payment thereof respectively; (*i*) AND

For the consideration aforesaid, the mortgagor covenants that the trustees of the copyholds shall surrender the same,

to the use of the mortgagees in fee, but subject to a proviso for

making void the surrender, on payment by the mortgagor of the principal sum and interest secured.

(*h*) See form of memorandum of such surrender, *ante*, p. 362.

(*i*) The estate was of such ample value that a power of sale was thought unnecessary. Where a power of sale is introduced, it is usual and pru-

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagees*], their heirs and assigns, in manner following, (that is to say), that he, the said [*mortgagor*], is, at the time of the sealing and delivery of these presents, lawfully and rightfully entitled to a good, sure, perfect, absolute, and indefeasible estate of inheritance, in or as of fee simple, in possession of and in the said freehold and copyhold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, without any condition, trust, power of revocation, or limitation of any use or uses, or other restraint, cause, matter, or thing whatsoever, to alter, change, charge, incumber, lessen, determine, defeat, or make void the same, except as appears by these presents; *And* that he, the said [*mortgagor*], now hath in himself good right, full power, and lawful and absolute authority, to grant, release, surrender, convey, and assure the said freehold and copy-

Covenants for title from the mortgagor;

that he has good right to convey and surrender;

---

dent to add at the end of it a clause for preventing its insertion affecting the right of redemption. The clause may be as follows:—

Proviso in a mortgage, to prevent the power of sale affecting the right of redemption.

"PROVIDED ALWAYS, and it is hereby further agreed and declared, &c., that if default shall be made in payment of the said sum of pounds, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, neither the aforesaid power of sale, nor anything herein contained, shall extend to prevent the said [*mortgagee*], his heirs, executors, administrators, or assigns, from filing a bill or bills in equity for foreclosing the right of redemption, which shall or may be subsisting in the said messuages or tenements, lands, hereditaments, and premises, hereby released, or intended so to be, and their appurtenances, under or by virtue of these presents, or to preserve or protect such right, or equity of redemption, from being in any other manner lost, barred, or destroyed."

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

hold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagees*], their heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And further*, that if the said sum of 3000*l.* and interest, hereby secured, or any part thereof respectively, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then*, and in such case, and at any time thereafter, it shall and may be lawful to and for the said [*mortgagees*], their heirs and assigns, into and upon the said freehold and copyhold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, or any of them, or any part thereof, to enter, *And* the same from time to time, and at all times thereafter, peaceably and quietly to have, hold, occupy, possess, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his heirs or assigns, or any person or persons whomsoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest, whatsoever, in, to, out of, or upon the said freehold and copyhold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, or any of them, or any part thereof; *And* that free and clear, and freed and clearly, and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, leases, mortgages, uses, trusts, wills, entails, annuities, rent-charges, rents seck, and arrears of rent, fines, issues, amerciaments, statutes,

and that, if default shall be made in payment, it shall be lawful for mortgagees to enter and enjoy, free from interruption by the mortgagor;

for freedom from incumbrances;

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

recognizances, judgments, executions, extents, seizures, sequestrations, and all other estates, titles, troubles, charges, debts, and incumbrances whatsoever; *And* moreover, that if the said sum of 3000*l.* and interest, hereby secured, or any part thereof respectively, shall not be paid, conformably to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, *Then*, and in such case, he, the said [*mortgagor*], and his heirs, and all and every other persons and person whosoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim, any estate, right, title, or interest whatsoever, in, to, or out of, the said freehold and copyhold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, or any of them, or any part thereof, shall and will, from time to time, and at all times thereafter, upon every reasonable request of the said [*mortgagees*], their heirs or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, things, grants, releases, surrenders, conveyances, and assurances, in the law whatsoever, for the further, better, more perfectly, and absolutely granting, releasing, surrendering, conveying, and assuring of the said freehold and copyhold lands, hereditaments, and premises, hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagees*], their heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*mortgagees*], their heirs or assigns, or their or any of their counsel in the law, shall be reasonably devised, or advised and required: AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance and further performance of the said agreement, and in consideration of the said sum of 3000*l.* by the said [*mortgagees*] to the said [*mortgagor*] paid, as hereinbefore is mentioned, HE, the said

and for further assurance.

Third witnessing part.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

[*mortgagor*], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to them, the said [*mortgagees*], their executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, or some or one of them (*will pay the principal and interest, as before mentioned*, see *ante*, p. 282): AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the said agreement, and in consideration of the said sum of 3000*l.* by the said [*mortgagees*] to the said [*mortgagor*] so paid, as hereinbefore is mentioned, she, the said [*mother of the mortgagor*], *Doth* hereby, for herself, her heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagees*], their heirs and assigns, that while any monies shall remain owing on the security of these presents, she, the said [*mother of the mortgagor*], or her assigns, (*k*) shall not nor will, in exercise of the powers or authorities to her and them given and reserved, in and by the said hereinbefore-recited indenture of appointment and release of the 31st day of July, 1821, as aforesaid, make, or cause or permit to be made, any entry or distress into or upon the said freehold lands, hereditaments, and premises, hereby granted and released, or intended so to be, or any part thereof, for the recovery of the said annuities, or yearly rents or sums of 650*l.*, 600*l.*, and 300*l.*, respectively limited and assured to her, the said [*mother of mortgagor*], and her assigns, by the same indenture, as aforesaid, or any of them, or any part thereof respectively, until the other lands, hereditaments, and premises, comprised in the same indenture, shall have been resorted to and made available for that purpose, so far as may be practicable, and unless the security afforded thereby shall prove insufficient for such purpose; AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of 3000*l.* by the said

The mortgagor covenants for payment of principal and interest.

Fourth witnessing part.

Covenant from the mother of mortgagor, that while any monies remain due on the security, she will not make any entry or distress on the premises, for recovery of her annuities.

Fifth witnessing part

(*k*) As to the mode of exonerating an estate from rents and annuities, so as to prevent their extinguishment, see title RELEASES, in the seventh volume.

[*mortgagees*] to the said [*mortgagor*] paid, as hereinbefore is mentioned, THEY, the said [*mother of mortgagor*], [*eldest brother of mortgagor*], [*youngest brother of mortgagor*], and [*mortgagor*], (but as to each of them the said [*mother of mortgagor*], [*eldest brother of mortgagor*], and [*youngest brother of mortgagor*], so far only as she and he respectively is interested, and not by way of covenant or warranty), *Do* by these presents declare, direct, and agree, that the said [*trustees of the copyholds*], or the survivor of them, or the heirs or assigns of such survivor, do and shall forthwith surrender into the hands of the lord of the said manor of , in manner hereinbefore mentioned, the said copyhold lands, hereditaments, and premises hereinbefore described, and hereby covenanted to be surrendered or intended so to be, and their appurtenances; *And* do and shall in the mean time, and until such surrender shall be made, stand and be seised, or possessed of and interested in, the same copyhold lands, hereditaments, and premises, and their appurtenances, *In trust* for the said [*mortgagees*], their heirs, executors, administrators, and assigns, for further and better securing the said sum of 3000*l.* and interest hereby secured, as aforesaid, and so and in such manner as that the same sum and interest may have preference and priority of payment and security over the said annuities or yearly rents, or sums and portions respectively provided for the said [*mother of mortgagor*], [*eldest brother of mortgagor*], and [*youngest brother of mortgagor*], in and by the said recited indenture of appointment and release of the 31st day of July, 1821, as hereinbefore is mentioned; AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of 3000*l.*, by the said [*mortgagees*] to the said [*mortgagor*] paid, as hereinbefore is mentioned, *And* also in consideration of the sum of 10*s.* of lawful money of Great Britain and Ireland by the said [*assignee of the term of five hundred years*], to the said [*assignors of the same term*], paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), THEY, the said [*assignors of the term of five hundred years*], at the request

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

Declaration by the mother and brothers of the mortgagor that the trustees of the copyholds may surrender them to the mortgagees in manner aforesaid, and shall, until such surrender, stand seised thereof, in trust for the mortgagees.

Sixth witnessing part.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

and by the direction of the said [*mother of mortgagor*], [*eldest brother of mortgagor*], [*youngest brother of mortgagor*], and [*mortgagor*], and upon the nomination of the said [*mortgagees*], (testified by their respectively being parties to and sealing and delivering these presents), *Have*, and each of them *Hath*, bargained, sold, assigned, transferred, and set over, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, assign, transfer, and set over, unto the said [*assignee of the term of five hundred years*], his executors, administrators, and assigns, ALL and singular the said freehold lands, hereditaments, and premises hereinbefore described, and hereby granted and released, or intended so to be, and their appurtenances; *And* all the estate, &c., TO HAVE AND TO HOLD the said lands, hereditaments, and all and singular other the premises hereby assigned or intended so to be, and every part thereof, with their appurtenances, unto the said [*assignee of the term of five hundred years*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, created therein by the said hereinbefore-recited indenture of appointment and release of the said 31st day of July, 1821, as aforesaid, *In trust* for the said [*mortgagees*], their executors, administrators, and assigns, *But* subject nevertheless to the proviso or agreement for redemption hereinafter contained (that is to say), PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said [*mother of mortgagor*], [*eldest brother of mortgagor*], [*youngest brother of mortgagor*], [*mortgagor*], and [*mortgagees*], that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do, on or at the days or times, and in manner hereinbefore mentioned, well and truly pay, or cause to be paid, unto the said [*mortgagees*], their executors, administrators, or assigns, the said sum of 3000*l.* and interest hereby secured, as aforesaid, *Then*, and in such case, and at any time thereafter, he, the said [*assignee of the term of five hundred years*], his executors, administrators, or assigns, shall and will, upon the request and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns,

Assignment of the term of five hundred years to [ ] in trust for mortgagees, but subject to a proviso for redemption and re-assignment upon the subsisting trusts thereof.

Proviso for redemption and re-assignment of the term on the subsisting trusts.

re-assign the said lands, hereditaments, and premises hereby assigned, or intended so to be, and their appurtenances, unto the said [*assignors of the term of five hundred years*], their executors, administrators, and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term of five hundred years, created therein, as aforesaid; *Nevertheless*, upon the trusts and subject to the provisoes in the said indenture of appointment and release of the 31st day of July, 1821, declared and contained, of and concerning the same, or such and so many of them as shall be then subsisting and capable of taking effect (*covenant from the assignors of the term, with the assignee, that they have done no act to incumber, as ante*, p. 299); PROVIDED ALWAYS, and it is hereby lastly agreed and declared, between and by the said parties to these presents, that until default shall be made in payment of the said sum of 3000*l.* and interest hereby secured, or some part thereof, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to and for the said [*mortgagor*], his heirs and assigns, or his or their trustees or under-tenants, peaceably and quietly to have, hold, occupy, possess, and enjoy, the said freehold and copyhold lands, hereditaments, and premises hereby respectively granted and released, and covenanted to be surrendered, or intended so to be, and their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagees*], their heirs or assigns, or the said [*assignee of the term of five hundred years*], his executors, administrators, or assigns, or any person or persons whomsoever, lawfully or equitably claiming, or to claim, by, from, through, under, or in trust for them, or any of them. (*l*) IN WITNESS, &c.

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

Proviso that, until default, mortgagor shall enjoy as against the mortgagees and assignees of the term of five hundred years.

(*l*) Where money is lent by trustees, and the mortgage-deed contains no notice of the trusts to which it is subject, it is usual to insert a declaration, that if any of the mortgagees shall die before the money is paid off, the receipt of the survivors shall be a sufficient discharge for it, and that the

MORTGAGE OF FREEHOLDS AND COPYHOLDS TO TRUSTEES OF A SETTLEMENT.

concurrence of the personal representative of the deceased mortgagee shall not be required. The reason for this practice is, that although, where two or more persons advance money jointly on mortgage, and one of them dies, the debt will *at law* belong to the survivors or survivor, yet *in equity* the mortgagees will be presumed to have been tenants in common of the money. *Petty* v. *Styward*, 1 Cha. Rep. 31; 1 Eq. Ca. Ab. 290; also 2 Ves. 258, and 3 Ves. 631. A recital or statement that the money lent belonged to the mortgagees as *joint tenants* would, it is conceived, be alone quite sufficient; but it is generally better to introduce a clause to the effect alluded to, which may be as follows:—

Proviso, that if any of several mortgagees, being trustees, shall die before the mortgage money is paid off, the receipts of the survivors shall be sufficient.

"PROVIDED ALWAYS, and it is hereby agreed and declared, that if any of them, the said [*mortgagees*], shall happen to depart this life while the said sum of 3000*l.* and interest hereby secured, or any part thereof, shall remain owing and unpaid on this security, the receipt or receipts of the survivors or survivor of them, or of the executors or administrators of such survivor, shall be an effectual discharge or effectual discharges for the said sum of 3000*l.* and the interest thereof, or of so much thereof respectively as shall so remain owing and unpaid, and shall exonerate and discharge the person or persons paying the same from all claims and demands whatsoever, of or by the representative or representatives of the others or other of them, the said [*mortgagees*]."

DECLARATION OF TRUST OF A SUM OF MONEY LENT ON MORTGAGE.

### DECLARATION *of* TRUST *of a Sum of Money secured by a* MORTGAGE, *where the money lent was advanced by the Trustees of a Marriage Settlement, which was not indorsed on the Mortgage-Deed.* (*a*)

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*one trustee*], of, &c., and [*other trustee*], of, &c., SEND GREETING. WHEREAS, by an indenture of settlement, bearing date the 31st day of October, 1828, and made between the said [*father of lady*], of, &c., of the first part; [*lady*], of, &c., spinster, of the second part; [*gentleman*], of, &c., architect, of the third part; and the

Recites the marriage settlement.

---

(*a*) According to *Martin's* case, a mortgagee is not allowed, in taxing the costs upon a mortgage transaction, the expenses of a separate declaration of trust of the monies lent, but in practice this expense is almost always allowed by the mortgagor. In nine cases out of ten a separate declaration of trust is made for the accommodation of the mortgagor, and to prevent his title from being affected with notice of the trusts of the money secured, and the consequent necessity of his procuring an attested copy of the settlement, and a covenant for the production of the original, which, if the trusts appeared on the mortgage-deed, would be necessary, for the purpose of showing that the trustees lending the money were capable, either from the nature of the trusts, see *Sowerby* v. *Lacy*, 4 Mad. 143; or by the usual receipt clause, able to give an effectual discharge for the money on its repayment. The decision seems an unreasonable one, and would probably not have been made, if the learned judge, *Lord Wynford*, had been acquainted with the usual practice, and the reasons for it: a special agreement on the subject seems now necessary. In few cases can it be expected that the trustees, or any tenant for life of the trust fund, would consent to bear this expense.

As to whether mortgagor or mortgagee should bear the expense of a separate declaration of trust of the money lent.

DECLARATION OF TRUST OF A SUM OF MONEY LENT ON MORTGAGE.

said [*trustees*], of the fourth part; a sum of 3948*l.* 16*s.* 3*d.* 3*l.* per cent. Consolidated Bank Annuities, to which the said [*lady*] was entitled, as therein is mentioned, was (in consideration of the marriage then intended and soon afterwards solemnized between the said [*gentleman*] and [*lady*],) assigned to, or otherwise vested in, the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts in the said indenture declared concerning the same, and hereinafter in part mentioned, (that is to say), *Upon trust*, after the solemnization of the said then intended marriage, to pay the dividends and annual produce of the said sum of 3948*l.* 16*s.* 3*d.* 3*l.* per cent. Consolidated Bank Annuities, unto the said [*lady*], for her sole and separate use during the joint lives of herself and the said [*gentleman*], *and* after the decease of such one of them, the said [*gentleman*] and [*lady*], as should first happen to die, *Upon trust* to pay the said dividends and annual produce unto the survivor of them, the said [*gentleman*] and [*lady*], during his or her life, *And* after the decease of the survivor of them, the said [*gentleman*] and [*lady*], upon trust to stand possessed of the said Bank Annuities, and the dividends and annual produce thereof, for the benefit of the children of the said [*gentleman*] and [*lady*], as in the said indenture is mentioned; *And* by the said indenture it was provided and agreed, that it should be lawful for the said [*trustees*], and the survivor of them, and the executors or administrators of such survivor, at any time or times thereafter, by the direction or with the consent of the said [*gentleman*] and [*lady*], or the survivor of them, to be testified by some writing under their, his, or her hands or hand, to sell, transfer, and dispose of the said sum of 3948*l.* 16*s.* 3*d.* 3*l.* per cent. Consolidated Bank Annuities, or any part thereof, and to lay out and invest the money arising thereby in the names or name of the said [*trustees*], or the survivor of them, or the executors or administrators of such survivor, in any of the Parliamentary stocks or public funds of Great Britain, or at interest on government or real securities in England or Wales; AND WHEREAS the said [*trustees*] have this day, in pursuance and by virtue of the trust or power in the said hereinbefore-recited indenture of settlement for that purpose

The power to charge securities.

The whole of the stock mentioned in the settlement;

DECLARATION OF TRUST OF A SUM OF MONEY LENT ON MORTGAGE.

contained, and with the consent and approbation of the said [*gentleman*] and [*lady*] (testified by a memorandum or direction (*b*) in writing, under the hands of the said [*gentleman*] and [*lady*], indorsed on the second skin of the said indenture of settlement, and bearing even date with these presents), sold and disposed of the said sum of 3948*l.* 16*s.* 3*d.* 3*l.* per cent. Consolidated Bank Annuities, so assigned to or vested in them, as hereinbefore is mentioned, and paid the produce thereof, which amounted (after deducting the broker's commission and other incidental expenses) to the sum of 3550*l.* 10*s.* of lawful money of Great Britain and Ireland, to [A. B.], of, &c., Esq.; *And* for securing the payment of the said sum of 3550*l.* 10*s.*, together with interest for the same, after the rate of 4*l.* 10*s.* for 100*l.* by the year, the said [A. B.] hath, (by an indenture of appointment and release, bearing even date with these presents, and made, or expressed to be made, between him, the said [A. B.], of the first part; [C. D.], therein described, of the second part; and the said [*trustees*], of the third part; and grounded on a lease for a year, therein mentioned or referred to), appointed and conveyed to the said [*trustees*], their heirs and assigns, *All* that, &c. (*c*) *(parcels)* and their appurtenances, *To hold* the same unto and to the use of the said [*trustees*], their heirs and assigns, subject to the usual proviso or condition for redemption and re-conveyance thereof; AND WHEREAS the said [*trustees*] have agreed to join in, and make and execute, the declaration of trust hereinafter contained; Now

and the payment of the produce to [A. B.], of, &c.;

then a conveyance from [A. B.], by way of mortgage by an indenture of even date;

and the agreement to execute a declaration of trust;

---

(*b*) See the precedents under the title DIRECTION, Vol. 4, p. 60-62.

(*c*) If the parcels are long, they need not be set out fully. It will be sufficient to say,—

"Divers messuages or tenements, lands, and hereditaments, of or belonging to him, the said [A. B.], situate and being at , in the said county of , in the said indenture of lease and release particularly described, and therein mentioned to be now in the respective occupations of [X. Y.] and [Y. Z.]." See Vol. IV., p. 62.

DECLARATION OF TRUST OF A SUM OF MONEY LENT ON MORTGAGE.

Declaration, that the trustees will stand possessed of the money secured by the mortgage, upon the same trusts, &c. as by the settlement were declared of the stock by the sale of which it was produced.

KNOW YE, (*d*) *And* these presents witness, that the said [*trustees*] do hereby respectively declare, that they, the said [*trustees*], their executors, administrators, and assigns, shall and will stand and be possessed of and interested in the said sum of 3550*l.* 10*s.* and interest, respectively secured by the said hereinbefore-recited indenture of appointment and release, and the lease for a year therein mentioned, and every part thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, which, in and by the said hereinbefore-recited indenture of settlement, were declared and contained, of and concerning the therein and hereinbefore-mentioned sum of 3948*l.* 16*s.* 3*d.*, 3*l.* per cent. Consolidated Bank Annuities, and the stocks, funds, or securities, in or upon which the same should be invested, as aforesaid, and the dividends and annual produce thereof, respectively; *And* shall and will apply and dispose of the same accordingly. IN WITNESS, &c.

---

(*d*) The following declaration of trust, where the money lent was advanced by trustees under a will, may be useful: the recital of the mortgage of even date was in the usual form :—

Declaration of trust of mortgage-money advanced by trustees under a will.

"NOW KNOW YE, that the said sum of pounds, in the said hereinbefore-recited indenture of release, expressed to be paid by the said [*mortgagees*], to the said [*mortgagor*], as hereinbefore is mentioned, was paid by the said [*mortgagees*], with and out of certain monies in their hands, as trustees for [A. B.], of , widow, and her children, under and by virtue of the last will and testament of [X. Y.], of , Esq., deceased, bearing date the day of , and duly proved in the court of , on the day of ; *And* that they, the said [*mortgagees*], their executors, administrators, or assigns, shall and will stand and be possessed of and interested in the said sum of pounds, secured by the said hereinbefore-recited indenture as aforesaid, and the interest thereof, upon and for the same trusts, intents, and purposes, as in and by the said will of the said [X. Y.] are expressed and declared, of and con-

DEED *of* COVENANT *from a* MORTGAGOR *to a* MORTGAGEE *to produce the Mortgagor's Marriage Settlement as evidence that his Wife is barred from claiming her* DOWER *in the Mortgaged premises.*

COVENANT TO PRODUCE MORTGAGOR'S MARRIAGE SETTLEMENT.

THIS INDENTURE, made, &c., BETWEEN [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part. WHEREAS, by indentures of lease and release bearing date, &c. (*recite conveyance to mortgagee in fee as* p. 292-3), AND WHEREAS, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made, &c. (*recite mortgage, as ante,* p. 296); AND WHEREAS, upon the execution of the said hereinbefore-recited indenture of release, it was agreed that the said [*mortgagor*] should enter into the covenant hereinafter contained; NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the premises, HE, the said [*mortgagor*], *Doth* hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*mortgagee*], his heirs, executors, administrators, and assigns, that unless prevented or hindered by fire or some other inevitable accident, he, the said [*mortgagor*], his heirs, executors,

Parties.

Recites conveyance to the mortgagor in fee, the mortgage, and the agreement that the mortgagor should enter into the covenant after contained.

Witnessing part.

The mortgagor covenants to produce, during the life of his wife, to the mortgagee, when required, the settlement

---

cerning the monies thereby bequeathed in favour of the said [A. B.] and her children, as therein is mentioned, and the interest thereof; *And* shall and will hold or pay and apply the same sum and interest accordingly."

COVENANT TO PRODUCE MORTGAGOR'S MARRIAGE SETTLEMENT.

or administrators, shall and will, from time to time, and at all times hereafter, during the life of Elizabeth, the wife of the said [*mortgagor*], at the request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the expense of him, the said [*mortgagor*], his heirs, executors, or administrators, produce and show forth, or cause to be produced and shown forth, unto the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel, attornies, agents, or solicitors, or at any trial or hearing in any court of law or equity, or otherwise, as occasion shall require, (*a*) a certain indenture of settlement, executed previously to, and in contemplation of, the marriage of the said [*mortgagor*] and Elizabeth his wife, bearing date the day of , and made, or expressed to be made, between the said [*mortgagor*], of the first part, the said Elizabeth, his wife, by her then name and description of Elizabeth , of , in the county of , spinster, of the second part; and A. B., of, &c., and C. D., of, &c., of the third part; by which indenture provision was made for the said Elizabeth, the wife of the said [*mortgagor*], in the event of her surviving him, and declared to be and accepted by her in lieu of and full satisfaction for all dower thirds and widow-rights to which she might become entitled, or claim in, out of, or upon all or any of the lands, hereditaments, and premises, of or to which the said [*mortgagor*] then was, or during the said intended coverture might be, seised or entitled for an estate of inheritance; *And* also shall and will, during such time as aforesaid, unless prevented or hindered as hereinbefore is mentioned, keep and preserve the same indenture safe, undefaced, unobliterated, and uncancelled. IN WITNESS, &c.

made on his marriage, whereby provision was made for his wife, in bar of the dower she might otherwise claim out of his estates.

And will, during such time as before mentioned, keep and preserve the same settlement safe, &c.

As to covenant from a mortgagor to produce title-deeds.

(*a*) When a mortgagor mortgages, either in fee or for years, only a small part of his estates, as is frequently the case when the mortgagor in fee is engaged in building speculations, it is usual for the mortgagor to stipulate that the mortgagee shall be satisfied with a covenant for the production of the title-deeds and attested copies of them:—a memorandum of the mortgage being indorsed on the conveyance to the mortgagor. The form of such a deed of covenant will be the same as is used in the case of a sale. See Vol. VI. p. 279; also Vol. IV. p. 7, 179, and 193.

COVENANT FROM MORTGAGEE TO PRODUCE TITLE DEEDS TO MORTGAGOR.

### DEED *of* COVENANT *from a* MORTGAGEE *to produce to the* MORTGAGOR *the Title-Deeds relating to the Estates in Mortgage.* (*a*)

THIS INDENTURE, made the day of , 182 , BETWEEN [*mortgagee*], of, &c., of the one part; and [*mortgagor*], of, &c., of the other part: WHEREAS, by indentures of lease and release, bearing date respectively the day before and even date with these presents, and respectively made, or expressed to be made, between the said [*mortgagor*], of the one part; and the said [*mortgagee*], of the other part (*recites the mortgage-deed, as ante*, p. 296); AND WHEREAS, upon the execution of the said hereinbefore-recited indentures, the said [*mortgagor*] delivered into the hands or custody of the said [*mortgagee*], the several deeds, instruments, and writings mentioned and set forth in the schedule hereunder written or hereunto annexed, and which respectively relate to or concern the title to the said messuages or tenements,

Parties.

Recites the mortgage-deed;

the delivery to the mortgagee of the deeds, &c., in the schedule, and his agreement to covenant as after mentioned.

---

(*a*) On the execution of a mortgage, the more usual practice is to procure the mortgagee to sign an acknowledgment of the delivery to him of the title-deeds relating to the mortgaged estate, and an undertaking or agreement to deliver them up to the mortgagor when the principal money and interest are paid. See 1 *Byth., Stew. edit.*, p. 1—4. But the better course is, to procure from the mortgagee, if possible, a covenant for the production of the deeds at any time when required by the mortgagor, for the mortgagor is often unable to discharge the debt without selling or mortgaging the estate to some other person; and, as a mortgagee, without such a covenant, would not be obliged to produce the deeds, except on payment of his debt, or having the amount brought into court, it would in most cases be impracticable for the mortgagor to effect a sale or new mortgage, if the mortgagee in the first mortgage insisted on his right, and refused to produce the title-deeds.

A mortgagor should have a covenant from the mortgagee to produce the title-deeds.

COVENANT FROM MORTGAGEE TO PRODUCE TITLE DEEDS TO MORTGAGOR.

lands, hereditaments, and premises comprised in and conveyed by the same indentures, as aforesaid, and their appurtenances; *And* thereupon it was agreed that the said [*mortgagee*] should enter into such covenants in regard to the same, and to the said hereinbefore-recited indentures, as are hereinafter contained; (*b*) NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the said agreement, and in consideration of the premises, HE, the said [*mortgagee*], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagor*], his heirs, executors, administrators, and assigns, that, unless prevented or hindered by fire or some other inevitable accident, he, the said [*mortgagee*], his heirs or assigns, shall and will, from time to time, and at all times hereafter, upon the request and at the expense of the said [*mortgagor*], his heirs or assigns, produce and shew forth, &c. (*to the mortgagor, the deeds, &c. in the schedule, and the said hereinbefore-recited indentures, as ante*, vol. IV. p. 194). PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall at any time hereafter deliver the said deeds, instruments, and writings hereby covenanted to be produced, as aforesaid, to any transferree or purchaser of the hereditaments and premises therein comprised, or any of them, or to any other person or persons who shall hereafter become entitled to the possession of the same deeds, evidences, writings; and the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall, at the expense of the said [*mortgagor*], his heirs, executors, administrators, or assigns, procure the person or persons to whom the same deeds, instruments, and writings shall be so delivered, to enter into the like covenants and agreements with the said [*mortgagor*], his heirs, executors, administrators, or assigns, in regard to the same, as are hereinbefore contained on the part of the

Witnessing part.

Covenant to produce the deeds, &c.

Proviso for making the covenant void on another being procured from a transferree or purchaser.

(*b*) If, as is sometimes the case, the mortgage-deeds are included in the schedule, the above recital will require a little alteration.

said [*mortgagee*], his heirs, executors, and administrators, *Then*, and in such case, the said covenants and agreements hereinbefore contained on the part of the said [*mortgagee*], his heirs, executors, and administrators, shall cease, determine, and be at an end; *save* and except as to any previous breach which shall have been made of or in the observance or performance of the same covenants and agreements, or any of them. IN WITNESS, &c.

COVENANT FROM MORTGAGEE TO PRODUCE TITLE DEEDS TO MORTGAGOR.

---

CONVEYANCE *of an* ESTATE *by way of* MORTGAGE *To the use of* MORTGAGEE *for a* TERM *of* YEARS, *subject to a* PROVISO *for* CESSER *on payment of the Principal and Interest at the time mentioned;—with Remainder, To the use of* TRUSTEES *in* FEE, *Upon Trust to* SELL *at the Mortgagee's request in case of Default.* (*a*)

LIMITATION OF A TERM TO MORTGAGEE, AND THE FEE TO TRUSTEES FOR SALE.

**THIS INDENTURE**, made the day of , 182 , BETWEEN [*mortgagor*], of, &c., of the first part; [*mortgagee*], of, &c., of the second part; and [*one trustee*], of, &c., and [*other trustee*], of, &c., of the third part: WHEREAS, by indentures of lease and release, &c. (*recite conveyance to the mortgagor in fee*); AND WHEREAS the said [*mortgagor*], having occasion for the sum of pounds, hath applied, &c. (*as ante*, p. 279), secured by the bond and covenant of the said [*mortgagor*], and by a conveyance, in manner hereinafter mentioned, of

Parties.

Recites conveyance to mortgagor in fee;

the agreement to lend the money;

---

(*a*) This form of preparing a mortgage security is not very common; but it is, nevertheless, a favourite form with some conveyancers of considerable practice. The object of it is, to enable the mortgagee to enter and make distresses in case of default in payment of the interest without troubling the trustees, and at the same time to vest the power of *sale* in other persons than the mortgagee, if it should be necessary that that remedy should be resorted to.

Practical observation.

LIMITATION OF A TERM TO MORTGAGEE, AND THE FEE TO TRUSTEES FOR SALE.

the said lands, hereditaments, and premises hereinafter described, and intended to be hereby granted and released, and their appurtenances; And whereas, in pursuance and part performance of the said agreement, and in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] paid, as hereinafter is mentioned, the said [*mortgagor*] hath, by his bond or obligation in writing, bearing even date with these presents, become bound, &c. (*as ante*, p. 330), on payment by, &c., to, &c., of the sum of pounds, with interest for the same after the rate of 4*l.* for 100*l.* by the year, on or at the days or times, and in the manner in the said condition and hereinafter mentioned for the payment thereof respectively; Now this indenture witnesseth, that in pursuance and further performance of the said agreement, and in consideration of the sum of pounds, of lawful, &c., by the said [*mortgagee*] to the said [*mortgagor*] paid, &c., (*the receipt, &c., as ante*, p. 303), He, the said [*mortgagor*], *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth*, &c., unto the said [*mortgagee*], and his heirs, All that, &c. (*parcels*), Together with, &c. (*general words*), *And* the reversion, &c.; *And* all the estate, &c.; To have and to hold the said messuages or tenements, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and their appurtenances, unto the said [*mortgagee*] and his heirs, *To the uses* following (that is to say), *To the use* of the said [*mortgagee*], his executors, administrators, and assigns, for and during the term of one thousand years, to be computed from the day of the date of these presents, and thenceforth next ensuing and fully to be complete and ended, without impeachment of waste; *But* subject to the proviso or condition hereinafter contained for determining the same term, *And* from and after the expiration or sooner determination of the said term of one thousand years, and in the mean time, subject thereto, *To the use* of the said [*trustees*], their heirs and assigns, for ever; *Nevertheless*, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; Provided always, and it is hereby agreed and

and a bond of even date.

Witnessing part.

The mortgagor, in consideration of *l.* conveys the premises

to mortgagee for a term of one thousand years, subject to be void on payment of the principal and interest at the timeappointed, and subject thereto to trustees in fee, in trust to sell in case of default.

Proviso for cesser of the

declared, between and by the said parties hereto, that if the said [*mortgagor*], his heirs, executors, or administrators (*shall pay, &c., as ante*, p. 281), *Then*, and in such case, and immediately after such payments shall have been so made as aforesaid, the said term of one thousand years, hereby limited as aforesaid, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever; AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that, &c. (*for payment, as ante*, p. 282), AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, *And* also (as a separate covenant) with and to the said [*trustees*], their heirs and assigns, in manner following (that is to say), that he, the said [*mortgagor*], now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, release, and convey the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, To the uses hereinbefore declared concerning the same, and according to the true intent and meaning of these presents; *And* further, that the said messuages, &c., hereby, &c., and their appurtenances, shall, from time to time, and at all times hereafter, remain, continue, and be To the uses, and upon and for the trusts, intents, and purposes hereinbefore declared concerning the same, *And* be peaceably and quietly held, used, occupied, possessed, and enjoyed, and the rents, issues, and profits thereof received and taken accordingly, without any let, suit, trouble, denial, eviction, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his heirs or assigns, or any other person or persons whomsoever; AND that free, &c. (*as ante*, p. 284); *And moreover*, that he, the said [*mortgagor*], and his heirs, and all and every other person, &c. (*shall execute further assurances for assuring the said messuages, &c.*), To the uses hereinbefore limited and declared of and concerning the same, as by the said

LIMITATION OF A TERM TO MORTGAGEE, AND THE FEE TO TRUSTEES FOR SALE.

term, on payment of the principal and interest.

Covenant for payment;

and for title and further assurance.

LIMITATION OF A TERM TO MORTGAGEE, AND THE FEE TO TRUSTEES FOR SALE.

[*mortgagee*], his executors, administrators, or assigns, or the said [*trustees*], their heirs or assigns, or any of them, or his, their, or any of their counsel in the law, shall be reasonably devised or advised and required (*proviso for quiet enjoyment by the mortgagor until default, see ante,* p. 286); AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the said messuages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, are hereinbefore limited, *To the use* of the said [*trustees*], their heirs and assigns, as aforesaid, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same, (that is to say); *Upon trust* in case, &c. (*the principal and interest secured are paid at the time appointed; that the trustees shall re-convey to the mortgagor;* (*b*) *but, if default shall be made in such payment, then, at the request of the mortgagee, his executors, administrators, or assigns, to sell, and out of the money arising thereby to pay the principal and interest, and pay the surplus to the mortgagor:—nearly as in the provisoes of redemption and power of sale, ante,* p. 281-2, 309-12); PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that the receipt or receipts, of, &c. (*clause making the trustees' receipts sufficient discharges, see ante,* p. 312); PROVIDED ALWAYS, (*c*) and it is hereby agreed, &c. (*clause for making contracts and sales by the trustees alone valid, see ante,* p. 312); PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that if the said trustees hereby appointed, or to be appointed, &c. (*usual clause for changing and appointing new trustees, and for the indemnity of the trustees, as ante,* p. 319-20); PROVIDED ALWAYS, and the said [*mortgagor*] doth hereby, for himself, his heirs, exe-

Proviso for quiet enjoyment by mortgagor.

Declaration of trust of the fee limited to the trustees for sale.

Clauses for making the receipts of the trustees sufficient discharges, and sales by them valid.

Clauses for changing and appointing new trustees, and for their indemnity.

(*b*) See trusts of this kind, under title TRUST DEEDS, in the eighth volume.

(*c*) For clauses of this nature, see also title TRUST DEEDS, and other precedents under the present title.

cutors, and administrators, (*d*) COVENANT and agree, with and to the said [*trustees*], their respective heirs, executors, administrators, and assigns, *And* the said [*mortgagee*] *Doth* hereby consent and agree, that, notwithstanding the appointment of the said [*trustees*] to be trustees under these presents, and notwithstanding their, or either of their, accepting and acting in the execution of the trusts thereof, it shall be lawful for them respectively, and they respectively shall be entitled, to make and to be paid the usual and accustomed charges (*e*) as attornies or solicitors, or attorney or solicitor, for all business which shall be transacted, and for all trouble which shall be taken by them respectively in or about, or in relation to, the trusts, powers, and authorities hereinbefore contained, or any of them. IN WITNESS, &c.

LIMITATION OF A TERM TO MORTGAGEE, AND THE FEE TO TRUSTEES FOR SALE.

Clause enabling the trustees who were solicitors to make the usual charges as solicitors in executing the trusts.

---

(*d*) The following clause is sometimes inserted immediately after the trust for sale:—

"PROVIDED ALWAYS, and it is hereby agreed and declared, &c., that the power of sale hereinbefore-contained shall not extend, or be construed to extend, to destroy, prejudice, or affect the right or remedies of the said [*mortgagee*], his heirs, executors, administrators, or assigns, as mortgagee or mortgagees of the said hereditaments and premises under or by virtue of this present indenture, but that it shall be lawful for him or them to proceed to a foreclosure of the equity of redemption subsisting in the same hereditaments and premises by virtue hereof, or otherwise to enforce his or their said rights and remedies as a mortgagee or mortgagees, in the same manner and as effectually, to all intents and purposes, as if no such power had been contained therein (*see ante*, p. 419).

Clause to prevent the power of sale affecting the right to redeem.

(*e*) This clause is cautiously framed. The agreement to allow the trustees their professional charges is made between the mortgagor and trustees, and is not a stipulation on the part of the mortgagee. It is, however, conceived that such a stipulation would not affect the mortgage, if made by the mortgagee.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

## MORTGAGE *of an* UNDIVIDED *Share in a* SETTLED *Estate, by a surviving* TRUSTEE *of a* TERM *of* YEARS, *created for raising* PORTIONS, *where one of the Children provided for was dead, and his Executors required his Portion to be raised.* (*a*)

Parties.

THIS INDENTURE, made the day of , in the year of the reign, &c. 182 , between [*surviving*

---

Usual provisions in settlements and wills, in regard to portions and maintenance.

(*a*) In modern settlements and wills, where portions are intended to be provided, it is usual to express the time when the portions shall *vest*, the period at which they shall be *payable*, and the rate of interest they shall carry, from the time they become payable till they are paid, with provisions that the trustees may, after the deaths of the tenants for life, or in their life-time, with their consent, raise any part of the portions for the children's advancement; and that, after the death of the tenants for life, and until the portions become payable, the trustees may raise, for the maintenance of the children, such sums of money as shall be equal to interest on the portions; and that the trustees shall not proceed to a mortgage or sale till some of the portions become payable; and, in these cases, there is little or no difficulty in preparing securities under the trusts alluded to;—but it sometimes happens that the trusts to raise portions and maintenance are very inaccurately prepared, and the terms of years created for those purposes are misplaced in the limitations of the uses contained in the settlement or will creating the trusts, and it will therefore be proper to notice here some difficulties which have arisen on this head, and the cases which have been decided in reference to them. Terms of years, created for purposes which may take effect in the life-time of the tenants for life, should *precede* the limitations conferring the life estates, and not, as was formerly too often the case, follow them. On the ground of *convenience*, it was established by Lord *Cowper*, C., in *Corbet* v. *Maidwell*, 1 Salk. 159 (contrary to the literal interpretation of the trust), that, "though a term be limited in remainder, to commence after the death of a father, yet if the trust is to raise

Terms of years for raising portions should precede the parents' life estates.

If the term be subsequent, still the portions may be

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

*trustee of term to raise portions*], of the first part; [*executors of the will of the eldest of three portioners*], of, &c. of the second part; [*tenant for life*], of, &c. of the third part; and [*mortgagee*], of, &c. of the fourth part; WHEREAS, by a common recovery, duly suffered before

Recites the settlement creating the term;

---

a portion for a daughter payable at *eighteen*, or day of marriage, without doubt the daughter shall not wait the death of her father, but at the age of eighteen, or marriage, may compel a sale of the term;" and also, that, if the trust of a term for raising daughters' portions be limited to take effect, in case the father dies without issue male by his then wife, and the wife die without issue male, leaving a daughter, in such case the term is saleable in the life-time of the father." The former of the above propositions was supported by the subsequent cases of *Heyter* v. *Jones*, 3 Cha. Rep. 106; 1 Eq. Ca. Ab. 337; and *Gerrard* v. *Gerrard*, 2 Vern. 458; and the latter proposition was supported by the cases of *Greaves* v. *Mattison*, Sir T. Jones, 201, and *Staniforth* v. *Staniforth*, 2 Vern. 460.

raised in the parents' life-time, if such appears to have been the intention.

The consequences of the rules above laid down were soon discovered to be exceedingly inconvenient, and to be attended with very serious consequences; for, as is well observed by Mr. Coote, "if the portions were ordered to be raised by *sale* of the reversionary term, it was evident that the interests of the remainder-man, or reversioner, might, in case the property was not of great value, be totally sacrificed to the raising of the portions, and even if the property was considerable, still the injury done to the estate might be to a very serious extent. If the portions were ordered to be raised by *mortgage* of the reversionary term, then the estate of the tenant for life must be incroached on, to satisfy the accruing interest of the mortgage, contrary to the intent, and, in many cases, to the express wording of the settlement, or the only alternative was, that the interest should run in arrear; and as, in such latter case, the mortgagee might file his bill in equity, and, by procuring rents to be taken, convert interest into principal, it was clear, that if the tenant for life lived many years, the interest might be double, or even treble, the principal, and, by such means, prove the total ruin of the estate." In the later cases, the judges have appeared desirous to prevent the raising of portions in the life-time of the parents; and in *Stanley* v. *Stanley*, 3 Atk. 549, Lord Hardwicke said, the court would do so on very slight grounds. In *Buller* v. *Duncombe*, 1 P. Wms. 448, it was held, that if a particular time for raising the portions is mentioned, as, *from and after the commencement of the term*, they cannot be raised before that time, although made *payable at twenty-one, or marriage;* and in *Brome* v. *Berkeley*, 2 P. Wms. 484, it was held, that maintenance being directed to be raised out of the rents and profits, after the term *should*

Inconveniencies of the above rules in regard to sale of reversionary terms for raising portions.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

his Majesty's justices of the Court of Common Pleas for the county palatine of Lancaster, and by indentures of lease and release, bearing date respectively the 11th and 12th days of March, 1808, the release being

*take effect*, in possession, was alone sufficient to prevent the portion being raisable before that time. See also *Stephens* v. *Dethick*, 3 Atk. 39.

Whether the portions are, or are not, raisable in the life-time of the parents, depends upon the question, what, upon the whole, was the intention of the parties to the settlement, or of the testator, in the case of a will? If there be nothing more, from which, to collect the intention, than a limitation to the parent for life, with a term to raise portions at the age of twenty-one or marriage, and the interests are vested, and the contingencies have happened on which the portions are to be paid, the general rule is, that the interest is payable, and the portions must be raised in the only manner in which they can be raised; namely, by mortgage or sale of the reversionary term: *Codrington* v. *Lord Foley*, 6 Ves. 280. See also *Conway* v. *Conway*, 3 B. C. 267; *Hall* v. *Carter*, 2 Atk. 355; *Lyon* v. *Chandos*, 3 Atk. 416; *Clinton* v. *Seymour*, 4 Ves. 464; *Smith* v. *Evans*, Amb. 633; *Hebblethwaite* v. *Cartwright*, For. 30.

As to raising maintenance.

If the trust be for raising *maintenance*, it seems that the same rule prevails as where portions are to be raised; and that, notwithstanding the inconveniences, the maintenance must be raised when payable, although there be an existing life estate, if there be nothing to show that it is *not* to be raised till the determination of that estate. Where the term for raising the maintenance is limited to take effect, after the decease of a tenant for life, that circumstance is held to afford evidence of an intention, that the maintenance should not fall on the tenant for life, and it must therefore be raised by sale or mortgage of the reversionary term. *Ravenhill* v. *Dancey*, 2 P. Wms. 179; *Lyddon* v. *Lyddon*, 14 Ves. 558. As maintenance is a running sum, becoming due half-yearly or quarterly, as directed, the security must be prepared like other running securities; and it is presumed that half-yearly rents would be allowed.

Where the expression "rents and profits" will authorize a mortgage or sale.

It may also be proper, in this place, to refer to the different constructions that have been put on the expression "rents and profits," under different circumstances or situations. In general, the expression is held to mean *annual* rents and profits; but when applied towards raising portions or debts, and without any restrictive words, showing a clear intention that yearly rents are referred to, they will be considered to mean any profits the lands will yield, by sale, mortgage, or otherwise. *Lington* v. *Foley*, 2 Cha. Ca. 205; *Backhouse* v. *Middleton*, 1 Cha. Ca. 173; *Gibson* v. *Rogers*, Amb. 93; *Corbett* v. *Maidwell*, 1 Salk. 159; *Ivy* v. *Gilbert*, Prec. Cha. 583, 2 P. Wms. 13; *Trafford* v. *Ashton*, 1 P. Wms. 416; *Small* v. *Wing*, 5 B. P. C. 66, 2nd edit.; *Allen* v. *Backhouse*, 2 Ves. and Bea. 74;

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

made, or mentioned to be made, between [*father of tenant for life*], late of, &c., Esq., (father of the said tenant for life), but now deceased, and [*Elizabeth*], his wife, also since deceased, of the first part; the said [*tenant for life*], and [*Sarah Ann*], his wife, of the second part; [A. B.], of, &c. and [C. D.], of, &c. of the third part; [E. F.], of, &c. and [G. H.], of, &c. of the fourth part; [I. K.], of, &c. and [L. M.], of, &c. of the fifth part; [*deceased trustee of term to raise portions*], of, &c., and the said [*surviving trustee of term to raise portions*], of the sixth part; and [X. Y.] of, &c. and [Y. Z.], of, &c. of the seventh part; (being the deed making the tenant to the precipe in, and leading the uses of the said common recovery); The manors or lordships, or reputed manors or lordships, of and , in the said county of Lancaster, *And* the manor or lordship, or reputed manor or lordship, of , in the same county, with the rights, royalties, members, and appurtenances thereunto respectively belonging, *And* all and every the capital and other messuages or mansion houses, with the demesne and other lands to the same, respectively belonging or appertaining, or accepted or reputed to belong, or appertain thereto, or usually occupied or enjoyed with the same, or any of them; *And* also all that messuage, tenement, or farm, with the closes or pieces or parcels of land or ground therewith held and enjoyed, called farm, containing by estimation acres, roods, perches, formerly in the occupation of , then of , since of , and now of ; *And* also all that, &c. (*Parcels*), were (together with divers other manors and hereditaments, situate and being in the counties of and ), limited and assured, *To the uses* and upon the trusts in the said indenture of release declared concerning the same, and in part hereinafter mentioned; (that is to say), *As to*, for, and concerning all and singular the

*Earl of Rivers* v. *Earl of Derby*, 2 Ves. 72; *Stanhope* v. *Thacker*, Prec. Cha. 435; *Evelyn* v. *Evelyn*, 2 P. Wms. 672.

If, however, the words "rents, profits" are followed by words which imply that the money is not to be raised by sale or mortgage, or are placed in opposition to a trust for raising money by sale or mortgage, it seems that they will be held to mean *annual* rents only. See *Mills* v. *Bank*, 3 P. Wms. p. 1; *Ivy* v. *Gilbert*, ubi supra.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

said manors, messuages or tenements, farms, lands, hereditaments, and premises, thereinbefore described, situate and being in the said county of Lancaster, with their rights, members, and appurtenances, *To the use* and intent that the said [*tenant for life*] might, during the joint lives of himself and the said [*father of tenant for life*], receive and take one annuity or yearly sum of 800*l.*, payable as therein mentioned, *And to the further use* and intent that the said [*Elizabeth*], the wife of the said [*father of tenant for life*], in case she should survive the said [*father of tenant for life*], might, after his decease, receive and take, during her life, an annuity of 1000*l.* payable as therein mentioned, both which annuities, or yearly rent charges, have since, and are now, determined by the deaths of the said [*father of tenant for life*], and [*Elizabeth*], his wife, *And to the further use* and intent that the said [*Sarah Ann*], the wife of the said [*tenant for life*], in case she should survive the said [*tenant for life*], and whether the said [*tenant for life*] should die in the life-time of the said [*father of tenant for life*], or survive him, and her assigns, should and might, after the decease of the said [*tenant for life*], receive and take, during her natural life, and in addition to an annuity of 600*l.* secured to her out of certain estates, called the Croston Estates, by the settlement made previous to her marriage with the said [*tenant for life*], an annual sum or yearly rent charge of 700*l.*, to be chargeable upon and issuing out of all and singular the said manors, messuages or tenements, farms, lands, hereditaments, and premises, situate in the said county of Lancaster, with their rights, royalties, members, and appurtenances, and to be paid to the said [*Sarah Ann*], the wife of the said [*tenant for life*], or her assigns, by equal quarterly payments, as in the said indenture is mentioned, the first quarterly payment thereof to begin and be made on such of the said days of payment as should first happen after the decease of the said [*tenant for life*], with the usual powers of distress and entry, and detention of possession and perception of rents and profits, for better securing the payment of the same annual sum or yearly rent charge; *And* subject and without prejudice to the said several annual sums or yearly rents of 800*l.*,

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

1000*l.*, and 700*l.*, and the several powers and remedies given for securing the same, as aforesaid, *To the use* of the said [E. F.] and [G. H.], their executors, administrators, and assigns, for the term of one hundred years, to be computed from the day of the date of the said indenture of release, without impeachment of waste, upon the trusts in the same indenture contained, for the better securing the payment of the said annual sums or yearly rents, *And* subject to the said annual sums or yearly rents, and the said powers and remedies for securing the same, and the said term of one hundred years, and the trusts thereof, *To the use* of such person or persons, for such estate and estates, and in such manner as the said [*father of tenant for life*] and [*tenant for life*], should, by their joint deed or instrument in writing, executed as in the said indenture of release is mentioned, appoint; *And*, in default of such joint appointment, *And* subject thereto, *To the use* of the said [*father of tenant for life*], and his assigns, for his life, without impeachment of waste, with remainder *To the use* of the said [I. K.] and [L. M.], and their heirs during the life of the said [*father of tenant for life*], *In trust*, to preserve the contingent remainders, *And* after his decease (subject as aforesaid), *To the use* of the said [*trustees of the term to raise portions*], their executors, administrators, and assigns, for the term of five hundred years, to commence from the day of the decease of the said [*father of tenant for life*], and thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste, *upon* the several trusts, intents, and purposes, in the said indenture of release, and hereinafter mentioned; *And*, after the expiration or sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, *To the use* of the said [*tenant for life*], and his assigns, for his life, without impeachment of waste, with remainder *To the use* of the said [I. K.] and [L. M.], and their heirs, during the life-time of the said [*tenant for life*], *In trust* to preserve the contingent remainders, with remainder *To the use* of the said [X. Y.] and [Y. Z.], their executors, administrators, and assigns, for the term of one thousand years, to commence from the day of the decease of the said [*tenant for life*], and thenceforth next

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

ensuing, and fully to be complete and ended, without impeachment of waste, upon the trusts in the said indenture of release declared for raising, for the portions of the younger children of the said [*tenant for life*], by the said [*Sarah Ann*], his wife, the sum of money in the same indenture mentioned; *And* from and after the expiration of the said term of one thousand years, *And* in the mean time subject thereto, and to the trusts thereof, *To the use* of the first and every other son of the said [*tenant for life*], severally and successively, according to their respective seniorities in tail, male, with divers remainders over; *And* by the said indenture of release it was declared, that the trusts of the said term of five hundred years, thereby limited To the use of the [*trustees of the term to raise portions*], their executors, administrators, and assigns, were, that they, the said [*same trustees*], and the survivor of them, his executors, administrators, or assigns, should, after the decease of the said [*father of tenant for life*], or during his life-time, if he should so appoint, by any deed or instrument in writing, (*b*) to be by him executed, and attested by two or more credible witnesses, by demising, assigning, or otherwise disposing of the said manors, messuages, and other hereditaments, comprised in the said term of five hundred years, or any part thereof, for the whole or any part of the same term, either by way of absolute sale, or by way of mortgage, or by, with, and out of the rents, issues, and profits, of the same manors, messuages, and other hereditaments, or any of them, or by bringing actions, or making distresses upon the tenants or occupiers of the said hereditaments, or any of them, for the recovering of the rents then in arrear, or by all and every, or any one or more, of the said ways and means, levy and raise the sum of 20,000*l.* of lawful money, of, &c., together with all costs and expenses of levying and raising the same; *And* that they, the said [*trustees of the term to*

Declaration of trust of the term of five hundred years, to raise 20,000*l.* for portions.

Declaration of trust of the money to be raised.

(*b*) It is well settled, that where the instrument creating the power contains the word "writing," the power may be executed by a *will*: *Kibbet* v. *Lee*, Hob. 312. The cases are stated in Sir Edward Sugden's valuable work on Powers, p. 225—231, 4th edit.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

*raise portions*], their executors, administrators, or assigns, should stand and be possessed of and interested in the said sum of 20,000*l.*, which should be raised under the said trust, if so directed or appointed to be raised, as aforesaid, ***Upon trust*** for all and every, or such one or more, of the younger children of the said [*father of tenant for life*], by the said [*Elizabeth*], his wife, then born, or thereafter to be born (save and except such younger son, if any, as should or might, at the decease of the said [*father of tenant for life*], be entitled, by virtue of the limitation thereinbefore contained, to the said manors, messuages, and other hereditaments, either in possession, or in remainder immediately expectant on the determination of the said term of five hundred years), at such age or ages, day or days, and if the said appointment were made in favour of more than one, in such proportions, and with such provisions for maintenance, education, and advancement, and subject to such conditions and substitutions in favour of any one or more of the said children, except such son, as aforesaid, as the said [*father of tenant for life*], should, at any time or times thereafter, during his life, by deed executed, as in the said indenture of release is mentioned, or by his last will and testament, in writing, or any codicil or codicils thereto, in writing, to be signed and published by him, in the presence of, and to be attested by, two or more credible witnesses, direct, limit, or appoint; ***And***, in default of such direction, limitation, or appointment, ***And*** subject thereto, ***upon trust*** for the younger children of the said [*father of tenant for life*], by the said [*Elizabeth*], his wife, then born, and thereafter to be born, in such shares, at such times, and in such manner, as in the said indenture of release is mentioned;

The will of the father of tenant for life exercising his power to charge the settled estates, with 20,000*l.* for portions;

And whereas the said [*father of tenant for life*] duly signed and published his last will and testament in writing, in the presence of the three credible persons whose names are thereunto subscribed as witnesses, attesting the signing and publishing thereof, by him, the said [*father of tenant for life*], (which will bears date the day of ); ***And*** thereby, after reciting or taking notice of the said power or authority so given to or vested in him, in and by the said hereinbefore-recited indenture of

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

release, as aforesaid, and that he had provided for several of his younger children, in the manner in his said will mentioned, and that it was his wish and intention to appoint the said sum of 20,000*l.*, raisable under the said term of five hundred years, as therein and hereinbefore is mentioned, unto and equally amongst his three youngest children, [*deceased portioner*], [*other portioner*], and [*remaining portioner*], did, pursuant to and by virtue and in exercise of the said power and authority so given to him, as therein and hereinbefore is mentioned, and of all other powers and authorities whatsoever, direct, limit, and appoint, that they, the said [*trustees of the term for raising portions*], or the survivor of them, or the executors, administrators, or assigns, of such survivor, should, by the ways and means in the said hereinbefore-recited indenture of release in that behalf mentioned, levy and raise, immediately after the decease of him, the said [*father of tenant for life*], the sum of 20,000*l.* of lawful money of Great Britain, together with the costs and expenses of levying and raising the same, *And* should stand and be possessed of the said sum of 20,000*l.*, together with such lawful interest as should have accrued thereon, from the time of the decease of the said [*father of tenant for life*], until the same should be actually raised, *In trust* for, and should pay the same to and amongst the said testator's, said three youngest sons, the said [*deceased portioner*], [*other portioner*], and [*remaining portioner*], in equal shares, as tenants in common; And whereas the said testator departed this life some time in or about the year , without having altered or revoked his said will, and without having joined or concurred with the said [*tenant for life*] in any exercise of the joint power of appointment to them limited, in and by the said hereinbefore in part recited indenture of release, as aforesaid; *And* soon after his decease, the said will was duly proved by the executors thereof in the Prerogative Court of the Archbishop of Canterbury; And whereas the said [*deceased portioner*] departed this life on or about the day of , having previously duly made and published his last will and testament, in writing, bearing date the day of , and thereof appointed the said [*executors of deceased portioner*], executors, who

and directing the application of such portions.

The death of one of the trustees of the term to raise portions;

the death of the testator, and probate of his will;

the death of one of the portioners, having first made his will and appointed executors, who duly proved it;

that the executors of de-

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

duly proved the same in the court of , on or about the day of ; AND WHEREAS the said [*executors of deceased portioner*], having occasion for the third part or share, late of the said [*deceased portioner*], of and in the said sum of 20,000*l.* so directed to be raised as aforesaid, and which amounts to the sum of 6666*l.* 13*s.* 4*d.*, have requested the said [*surviving trustee of the term to raise portions*] to raise and pay them the same sum, under the trusts of the said term of five hundred years; *And*, in compliance with such request, the said [*surviving trustee of the term to raise portions*], hath applied to the said [*mortgagee*] to advance and lend the sum of 6666*l.* 13*s.* 4*d.* for that purpose, on the security of a mortgage, in manner hereinafter mentioned, of one equal undivided third part or share of and in the said manors, messuages or tenements, farms, lands, hereditaments, and premises, hereinbefore mentioned and described, and so comprised in the said term of five hundred years, as aforesaid, and their appurtenances, *And* also of the covenants on the part of the said [*tenant for life*] hereinafter contained, *And* also of an assignment of the said sum of 6666*l.* 13*s.* 4*d.*, to which the said [*executors of deceased portioner*] are so entitled, as aforesaid, and the interest hereafter to become due for the same; AND WHEREAS the said [*mortgagee*] hath agreed to comply with such application as aforesaid; AND WHEREAS the said [*tenant for life*] hath this day paid to the said [*executors of deceased portioner*] all interest which hath become due for the said 6666*l.* 13*s.* 4*d.* up to the day of the date hereof, as they, the said [*executors of deceased portioner*] do hereby admit and acknowledge; AND WHEREAS the said [*tenant for life*] hath agreed to pay and discharge all the costs and expenses of or attending the said intended security, as he doth hereby testify and declare. (*c*) NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement,

ceased portioner having occasion for their share in the 20,000*l.*, have applied to the surviving trustee of the term to raise and pay the same;

and, for that purpose, the surviving trustee has requested the mortgagee to lend the amount on the securities after mentioned;

that the mortgagee has agreed so to do;

that the tenant for life has paid the interest, and agreed to pay the expenses of the security.

First witnessing part.

(*c*) It is, perhaps, more usual and correct to assign the portion first, and to assign the term by the second witnessing part. This alteration may be most easily made.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

and in consideration of the sum of 6666*l.* 13*s.* 4*d.* of good and lawful money of Great Britain and Ireland, by the said [*mortgagee*], at the request and by the direction of the said [*surviving trustee of the term to raise portions*] (testified by his executing these presents), to the said [*executors of deceased portioner*], in hand, well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt and payment of which said sum of 6666*l.* 13*s.* 4*d.*, the said [*executors of deceased portioner*] and [*surviving trustee of the term*], do hereby respectively admit and acknowledge, and of and from the same and every part thereof do hereby respectively acquit, release, and for ever discharge the said [*mortgagee*], his executors, administrators, and assigns), and also in consideration of the sum of 10*s.* of like lawful money, by the said [*mortgagee*] to the said [*surviving trustee of the term to raise portions*], paid at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), He, the said [*surviving trustee*], in pursuance and execution of the trusts for this purpose declared and contained in the said recited indenture of release of the 12th day of March, 1808, and the said recited will of the said [*father of tenant for life*], or either of them, as aforesaid, *And* at the request and by the direction of the said [*executors of deceased portioner*], and with the privity and approbation of the said [*tenant for life*] (testified by their respectively executing these presents), *Doth*, by these presents, bargain, sell, assign, transfer, and set over, unto the said [*mortgagee*], his executors, administrators, and assigns, All that one equal undivided third (*d*) part or share (the whole into three

In consideration of the sum of *l.* by the mortgagee, to the executors of deceased portioner;

and of 10*s.* to the surviving trustee.

The surviving trustee of the term, in execution of trusts reposed in him, and by direction of the executors of deceased portioner, and with the approbation of the tenant for life,

assigns unto the mortgagee one-third of the premises comprised in the term.

Practical observation.

(*d*) Sometimes the entirety of *part* of the lands comprised in the term is mortgaged for raising a given share in the whole sum charged for portions, and the manner in which the trust for raising portions is often expressed appears to authorize this practice; but it is certainly more correct and fair towards the children entitled to the remainder of the sum charged for portions, to mortgage only such an undivided share in all the lands chargeable with portions as will correspond with the share of the portions which is, for the time being raised. Where a different mode is adopted, it

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

equal parts or shares, being considered as divided), of and in the said manors, messuages or tenements, farms, lands, hereditaments, and premises, hereinbefore mentioned or described, and so comprised in the said term of five hundred years as aforesaid, and their and every of their appurtenances; *And* the yearly and other rents, issues, and profits, thereof or thereunto incident, belonging, or in anywise appertaining; *And* all the estate, right, title, use, trust, property, claim, and demand, whatsoever, both at law and in equity, of him, the said [*surviving trustee*], in, to, out of, or upon the same undivided third part or share, hereditaments and premises, and every or any part thereof; To HAVE AND TO HOLD the said undivided third part or share hereby assigned, or intended so to be, of and in the said manors, messuages, or tenements, farms, lands, hereditaments, and premises, hereinbefore particularly mentioned and described, and their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the said term of five hundred years, created by the said hereinbefore-recited indenture of the 12th day of March, 1808, as aforesaid, without impeachment of or for any manner of waste; *But* subject nevertheless to the proviso or agreement for redemption hereinafter contained: (that is to say), PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that if the said [*tenant for life*], or other the person or persons for the time being entitled to the said undivided third part or share, hereditaments, and premises, hereby assigned, or intended so to be, in remainder, immediately expectant on the determination of the said term of five hundred years, under or by virtue of the limitations contained in the said hereinbefore-recited indenture of release, of the 12th day of March, 1808, shall

And all the estate.

*Habendum* to the mortgagee for the residue of the term of five hundred years, subject to the proviso for redemption after contained.

Proviso for redemption and re-assignment, free from incumbrances, by the mortgagee.

---

is important, on the part of the mortgagee, to see that it is authorized by the trust; for, otherwise, having notice of the trust, he will hold the lands mortgaged to him subject to a contribution, if the remainder of the lands is insufficient for payment of the residue of the sum charged for portions.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

and do well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the full sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, on the day of , now next ensuing the date of these presents, without making any deduction or abatement out of the same sum and interest, or any part thereof, for or by reason of any present or future taxes, charges, assessments, payments, or impositions, or for or by reason, or on account of, any matter, cause, or thing whatsoever; *Then*, and in such case, and at any time after such payment shall be so made, as aforesaid, he, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, upon the request and at the costs and charges of the person or persons making such payment, his, her, or their heirs, executors, administrators, or assigns, re-assign and re-assure the said undivided third part or share, hereditaments, and premises hereby assigned or intended so to be, and their appurtenances, unto the person or persons so making such payment, his, her, or their executors, administrators, or assigns, or as he, she, or they shall in that behalf order or direct for the then residue and remainder of the said term of five hundred years, freed from all incumbrances whatsoever, made, done, or committed in the mean time by the said [*mortgagee*], his executors, administrators, or assigns, so as for the doing thereof, he, the said [*mortgagee*], his executors, administrators, or assigns, or any of them, be not compelled or compellable to go or travel from the place or places of his, their, or any of their usual abode or dwelling; AND the said [*surviving trustee of the term*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT and declare, with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*surviving trustee*] (*hath, &c. done no act to incumber*); AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the premises, HE, the said [*tenant for life*], doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and

Covenant by the surviving trustee that he has done no act to incumber.

Second witnessing part.

The tenant for life covenants with the mortgagee to pay interest regu-

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*tenant for life*], or his assigns, shall and will, during the term of his natural life, in case the said sum of 6666*l.* 13*s.* 4*d.*, hereby secured, shall so long continue on the security of these presents, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, interest (*e*) for the said sum of 6666*l.* 13*s.* 4*d.* at and after the rate of 5*l.* for 100*l.* by the year, at or upon the day of , and day of , in each and every year, without making any deduction or abatement thereout, on any account whatsoever; *And* also that he, the said [*tenant for life*], and his heirs, or the person or persons for the time being entitled to the said manors, messuages or tenements, farms, lands, hereditaments, and premises hereinbefore described, and hereby assigned, or intended so to be, in remainder or reversion, immediately expectant on the determination of the said term of five hundred years, or some or one of them, shall and will, from time to time, and at all times hereafter, during the continuance of the said term of five hundred years, save, defend, keep harmless and indemnified, the said manors, messuages or tenements, farms, lands, hereditaments, and premises hereinbefore described, and hereby assigned, or intended so to be, and their appurtenances, of, from, and against all losses, costs, charges, deductions, damages, expenses, claims, and demands whatsoever, which at any time or times hereafter shall or may be had, caused, claimed, made or demanded, in or upon the same, or any part thereof, for, or by reason, or on account of, the said annual sum or yearly rentcharge of 700*l.* so charged and chargeable on the same premises in favour of the said [*Sarah Ann*], the wife of the said [*tenant for life*], in case she should survive the

larly while the principal remains on the present security.

And also to indemnify the premises against the annuity granted to the wife of the tenant for life.

(*e*) Sometimes the tenant for life is made to covenant for payment of the *principal*. This he ought not to do if he can possibly avoid it. A covenant by the tenant for life that he will, on twelve months' notice, either pay the money or procure a transferee of the security, and pay the *expenses* of such transfer, may, perhaps, not unreasonably be asked for.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

said [*tenant for life,*] as aforesaid, and the powers and remedies for securing the same for so long a time as the said sum of 6666*l.* 13*s.* 4*d.* or the interest thereof, or any part thereof, shall remain due and owing on the security of these presents; AND THIS INDENTURE LASTLY WITNESSETH, that in pursuance and further performance of the said agreement, and for the considerations aforesaid, and also in consideration of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*mortgagee*] to the said [*executors of deceased portioner*], paid, &c. (the receipt, &c.), THEY, the said [*executors of deceased portioner*], according to their rights and interests in the same, and so far as they can or may at law or in equity, but not further or otherwise, *Do*, and each of them *Doth*, by these presents, bargain, sell, assign, transfer, and set over, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT the said sum of 6666*l.* 13*s.* 4*d.* to which they, the said [*executors of deceased portioner*], are entitled under the said recited indenture of the 12th day of March, 1808, and the said will of the said [*father of tenant for life*], as hereinbefore is mentioned, and the interest which shall hereafter become due for the same, *And* all benefit and advantage to be had or made of the same, *And* all the right, title, interest, property, claim, and demand whatsoever, at law or in equity, of them, the said [*executors of deceased portioner*], and of each and every of them, in, to, out of, or upon the same, or any part thereof, TO HAVE, HOLD, receive, perceive, take, and enjoy the said sum of 6666*l.* 13*s.* 4*d.* interest, and all and singular other the premises hereby lastly assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, as and for his and their own proper monies, goods, and chattels, absolutely for ever, *And* that in as full, ample, and beneficial a manner, to all intents and purposes whatsoever, as the said [*executors of deceased portioner*], or any of them, could or might have had or enjoyed the same in case these presents had not been made and executed; AND for the better and more effectually enabling the said [*mortgagee*], his executors, administrators, or assigns, to recover and receive all and singular the monies and premises hereby lastly assigned,

Third witnessing part.

The executors of the deceased portioner assign the sum to which they are entitled, as aforesaid, to the mortgagee.

And all the right, &c.

*Habendum* to the mortgagee absolutely.

Power of attorney from the executors of deceased portioners to the mortgagee.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

or intended so to be, THEY, the said [*executors of deceased portioner*], *Do*, and each and every of them *Doth*, by these presents nominate, constitute, and appoint the said [*mortgagee*], his executors, administrators, and assigns, the true and lawful attorney and attornies of them, the said [*executors of deceased portioner*], and each and every of them, in their, or any or either of their names or name, or otherwise, to ask, demand, sue for, and receive, of and from all and every persons and person liable to pay the same, the said sum of 6666*l.* 13*s.* 4*d.* interest, and premises hereby lastly assigned, or intended so to be; *And* upon the receipt thereof, or of any part thereof, in their, or any or either of their names, to give proper and sufficient receipts and discharges for the same; *And*, on non-payment thereof, or of any part thereof, in their, or any or either of their names or name, but at the proper costs and charges in all things of the said [*mortgagee*], his executors, administrators, and assigns, to commence any action or suit at law or in equity, and the same to carry into effect, for the recovery and receipt of the said sum of 6666*l.* 13*s.* 4*d.* interest, and premises, or any part thereof; *And* one or more attorney or attornies, for all and every or any of the purposes aforesaid, to nominate and constitute, and him and them to remove and to displace, and to appoint others; AND the said [*executors of deceased portioner*] *Do*, and each and every of them *Doth*, hereby give and grant, unto the said [*mortgagee*], his executors, administrators, and assigns, full and absolute power for the recovering and receiving the said sum of 6666*l.* 13*s.* 4*d.* and premises hereby lastly assigned, or intended so to be, *And* that as fully to all intents and purposes, as they, the said [*executors of deceased portioner*], or any or either of them, could or might have had, if these presents had not been made and executed; AND each and every of them, the said [*executors of deceased portioner*], severally and separately, and apart from the others, and other of them, and for himself and his executors, administrators, or assigns, acts and deeds only, do hereby COVENANT and agree with the said [*mortgagee*], his executors, administrators, and assigns, that they, the said [*executors of deceased portioner*], shall not, nor will, nor shall or will

Covenant from the executors of deceased portioner that they will not accept the monies lastly assigned.

MORTGAGE UNDER TRUSTS OF A TERM OF YEARS TO RAISE PORTIONS.

any of their executors or administrators, accept or take the said sum of 6666*l.* 13*s.* 4*d.* interest, and premises hereby lastly assigned, or intended so to be, *Or* make void, revoke, or disannul these presents, or any power or authority herein contained; *But* shall and will at all times avow, justify, and confirm, all such proceedings and suits as he, the said [*mortgagee*], his executors, administrators, or assigns, or any of them, shall lawfully make, commence, prosecute, or bring, in respect of the said sum of 6666*l.* 13*s.* 4*d.* interest, and premises hereby lastly assigned, or intended so to be; *And* that the said [*executors of deceased portioner*] have not, nor hath any or either of them, made, done, &c. (*any act whereby the lastly assigned premises are incumbered.*) (*f*) PROVIDED ALWAYS, and it is hereby expressly agreed and declared, between and by the said parties hereto, that nothing hereinbefore contained shall extend or be construed to extend to make the said [*surviving trustee of term to raise portions*] personally liable for the payment of the said sum of 6666*l.* 13*s.* 4*d.* hereby secured, as aforesaid, or the interest thereof, or any part thereof respectively. (*g*) IN WITNESS, &c.

And that they have done no act whereby the same may be incumbered.

Proviso that nothing before contained shall extend to make the surviving trustee of the term liable to the payment of the money and interest hereby secured.

(*f*) Sometimes the tenant for life is made to covenant for *title;* but this is of course objected to, if the money can be otherwise raised.

(*g*) If the term created for raising portions be reversionary, expectant on a life estate, it is usual to make the tenant for life demise the lands to other trustees for ninety-nine years, if he, the tenant for life, shall so long live, in trust to permit the tenant for life to receive the rents till default in payment of the interest, and then for the trustee to receive them and retain the interest.

## MORTGAGE, *by* BILL *of* SALE, *of a* SHIP. (*a*)

BILL OF SALE OF A SHIP.

THIS INDENTURE, made the day of , 182 , BETWEEN [*mortgagor*], of, &c., of the one part; Parties.

---

(*a*) The provisions of the late act respecting the registry of ships (hereafter particularly mentioned), should be carefully attended to. Many of the decided cases on the subject of mortgages of ships, it is now unnecessary to consider, as the acts which gave rise to them have been repealed. Registry Act.

One very important question was, whether it was possible to effect a *mortgage* of a ship, as the form of registry prescribed by the acts then in force appeared to be applicable to an absolute transfer on a *sale* only; but Sir Thomas Plumer, in a very able judgment, decided that there was nothing in the acts to prevent an owner of a ship transferring his interests, and at the same time reserving a right of redemption. *Thompson* v. *Smith*, 1 Madd. 395; *Mestaer* v. *Gillispie*, 11 Ves. 626; Abbot on Shipping, p. 76. The late act expressly provides for the transfer of ships, or shares therein, by way of mortgage, so that no difficulty can now arise on this point. Whether a mortgage can be made of a ship is no longer doubtful.

Another question which has been much discussed in reference to the mortgage of ships, is whether a mortgagee of a ship out of possession is, as registered owner, liable for repairs. *Westerdell* v. *Dale*, 7 T. R. 306. See, also, Abbot on Shipping, p. 21; Trollope on Mortgages of Ships, p. 101. In a late case in the Court of King's Bench, *Briggs* v. *Wilkinson* 7 B. & C. 301, it was held, that unless a mortgagor had an express or implied authority from the mortgagee to act on his behalf, the mortgagee will not, simply as legal owner under the register acts, be liable for repairs *ordered* by the *mortgagor*; but the better opinion, perhaps, is, that he is liable for necessary repairs. As to liability of mortgagee of a ship for repairs.

It is laid down by several writers, that a bill of sale is only necessary when the vessel is *at sea*, and that a mere indorsement on the certificate of registry will be sufficient to transfer the property, if the vessel be *in port*; but it is very plain that this is not the fact, for it is clearly provided by Bill of sale is necessary, whether the ship is at sea or in port.

BILL OF SALE OF A SHIP.

Recites that the mortgagor is owner of the ship;

and [*mortgagee*], of, &c., of the other part: WHEREAS the said [*mortgagor*] is the owner or proprietor of (*b*) a cer-

---

the statute, that a bill of sale is necessary in both cases; that if a ship be *in port*, the bill of sale must, within thirty days after it's execution, be taken to the officers of the port at which the ship has been registered, or is about to be registered, and that the officers must indorse a memorandum of the registry on the bill of sale, and also a memorandum of the bill of sale on the certificate of registry; and that, if the vessel be *at sea*, the bill of sale must, within thirty days after it's execution, be taken to the custom-house to be entered for registration, when the vessel returns, and the certificate of registry must be produced for that purpose at the same place, within thirty days after the vessel has arrived in port. The transfer, and the memorandum of the transfer, have been sometimes considered to be one and the same thing, but they are perfectly distinct: the former is made by the vendor or mortgagor, and the latter by the custom-house officer.

Where bill of sale is not invalid by mis-recital of certificate of registry.

It is advisable, in reciting the certificate of registry, to copy it *verbatim*; but if the identity of the vessel be sufficiently shown, a mis-recital will not render the bill of sale void. See the late act, and also *Rolleston* v. *Smith*, 4 T. R. 161, and *Westerdell* v. *Dale*, *ubi supra*. See, likewise, *Harrington* v. *Fry*, 2 Bing. 179.

Surety will be discharged, if

If a mortgage of a ship becomes invalid through non-observance of the

---

(*b*) If the mortgagor be only part owner, the recital will be—

Variations where the mortgagor is only a part owner.

"is owner of undivided sixty-fourth parts or shares of and in," &c.;

and in the agreement to advance the money, the expression must be varied to—

"a mortgage, in manner hereinafter mentioned, of his said parts or shares of and in the ship or vessel hereinbefore referred to."

In describing the shares in the ship in the operative part, the form will be—

"ALL THOSE undivided sixty-fourth parts or shares of him, the said [*mortgagor*], of and in *All that* ship," &c.

And in the subsequent references to the shares, the expression should be—

"the said parts or shares hereby bargained, sold, and assigned, or intended so to be, of and in the ship or vessel and premises hereinbefore mentioned."

tain ship or vessel called the , of the burden of tons, and now on a voyage to (c) , whereof

BILL OF SALE OF A SHIP.

requirements of the registry acts, and a third party has joined in the security as surety, the surety will, by such neglect in the creditor, be discharged from the debt, to the extent of the value of the ship. *Capel* v. *Butler*, 2 Sim. & Stu. 457.

bill of sale is invalid.

Equity will not (except, perhaps, in case of *fraud*) relieve against any omission or informality in a bill of sale of a ship; and it would therefore seem, that there cannot be an equitable mortgage of a ship, either by a deposit of the documents relating to it, or by an agreement to execute a mortgage, if such agreement does not contain a recital of the certificate of registry, and otherwise comply with the provisions of the act. See *Brewster* v. *Clarke*, 2 Mer. 75; *Taylor* v. *Kinlock*, 1 Stark. 175; *ex parte Howton*, 1 Rose, 177; *Mestaer* v. *Gillespie*, 11 Ves. 625; *Hilbert* v. *Rolleston*, 3 Bro. C. C. 571; *Camden* v. *Anderson*, 5 T. R. 709; see, also, 2 Cox, 243; 13 Ves. 588; *Wilson* v. *Heather*, 5 Taun. 642; see cases in note, 1 Madd. 400; *ex parte Yallop*, 15 Ves. 60; *ex parte Houghton*, 17 Ves. 251; *Curtis* v. *Perry*, 6 Ves. 739.

No equitable mortgage of a ship.

In a late case, *Dean and another* v. *M'Ghie and another*, 4 Bing. 45, it was held that, by the mortgage of a ship, accruing freight also passed to the mortgagee, notwithstanding the forty-fifth section of the last Registry Act, whereby it is provided that the mortgagee shall not be deemed the owner, except for the purpose of making a transfer. The circumstances of the case were these:—In November, 1825, Prince, the owner of the ship Rosalind, being already indebted to R. L. Chance, borrowed 4000*l.* more of him, and, by way of security, transferred to him by bill of sale the ship Rosalind, then on her voyage home from Honduras, and certain policies of insurance effected upon her. The *habendum* was, to have and to hold the said ship or vessel, and policies thereby assigned, unto and by the said R. L. Chance, his executors, administrators, and assigns, subject to a proviso for redemption on payment of 8000*l.*, with interest, on the 16th of January, 1826. If failure were made in the payment, power was given to Chance to sell the vessel, and repay himself.

Mortgagee of a ship entitled to accruing freight.

*Dean* v. *M'Ghie.*

The money not having been paid, a captain, employed by Chance, on the 26th of January, 1826, took possession of the vessel on her return home, about seven miles below Gravesend; and his brokers gave notice to

(c) If the ship be in port, say here—

"now in the port of ;"

and substitute the same expression in the operative or assigning part.

Variation where the ship is in port.

BILL OF SALE OF A SHIP.

that it has been duly registered;

[ ] is master; And whereas the said ship or vessel has been duly registered pursuant to act of Parlia-

---

the parties, who had goods on board, and claimed the freight from them.

Chance having put up the ship for sale, and the seamen being clamorous for their wages, the defendants, as the brokers of Prince, paid the portage bill, amounting to 520*l.*, and including the seamen's wages, by a draft obtained from Chance for that purpose; and Chance then sold the ship, under the power of sale, to cover his claim against Prince, which amounted to 7246*l.* Prince was declared a bankrupt, Feb. 4th, 1826, and the plaintiffs were chosen assignees of his estate. In March following, Chance claimed of the defendants the 520*l.* which he had advanced to them for the portage bill. The defendants soon afterwards received 250*l.* on account of the freight, and the plaintiffs demanded it of them, but being indemnified by Chance, the defendants refused to pay it over. The action was then brought, and the trial came on before *Best*, C. J., at the London Sittings after Trinity Term, 1826, and the plaintiffs were then nonsuited.

In Michaelmas Term, a rule *nisi* was obtained, to set aside this nonsuit, on the ground that, by the bill of sale, the ship only passed to Chance, the mortgagee, and not the freight; that, by the forty-fifth section of the late Registry Act, the mortgagee was precluded from any claim to the freight; that the seamen could only inforce their claim to wages on the ship, and not on the freight; and that the defendants had paid the wages without authority. On cause being shown against the rule, three of the judges expressed themselves as follows:—

*Burrough*, J. *Burrough*, J. "Chance, the mortgagee, having taken possession of the ship, was liable to pay the seamen's wages, and he might act either in his own right, or as agent of Prince. As agent of Prince, he was entitled to authorize the defendants to receive the freight: having thus the freight in his hands, it would be most unjust if he were not allowed to deduct from it the charges he had incurred for portage."

*Gaselee*, J. *Gaselee*, J. "I think the nonsuit in this case was proper. The statute 6 Geo. IV. c. 110, was passed for the benefit of the mortgagee, and not to deprive him of any means of indemnity against loss.

Here the mortgagee, upon taking possession, pays money that the mortgagor ought to have paid, and increases his debt by the amount of that payment; and if he received money which the mortgagor had a title to receive, he might fairly deduct the payment from the receipt. But the cases all show that the mortgagee of the ship has a right to the freight."

*Best*, C. J. *Best*, C. J. "I did not reserve the point, because the case seemed so

ment (*d*), a copy of the certificate of which registry is as follows: (that is to say), This is to certify, &c. (*copy cer-*

---

plain. Chance, having got into possession, authorized the defendants to receive the freight. Whether entitled to it or not, they, as his agents, would have been able to detain the cargo till the freight was paid; and, having received the freight, they were entitled to deduct from it the charges, without incurring which the freight could not have been earned. The action for money had and received is an equitable action, and the defendants may fairly deduct, from any demand against them, payments which the plaintiffs must have made, if they stand in the situation of the owner. This would have been a complete defence, without considering the effect of the statute 6 Geo. IV. c. 110; but the object of that statute was to confer a benefit on mortgagees, by exempting them from charges and responsibilities to which they were before liable. It does not, however, prevent them from becoming legal owners, or apply to cases in which the mortgagee has reduced the ship into possession. There is, indeed, an express proviso, enabling him to take possession, for the purpose of sale, or otherwise; that is, for the purpose of discharging the debt due to him, to which the charges incurred, in consequence of taking possession, make an addition. It was decided, by *Morrison* v. *Parsons*, 2 Taunt. 407, that the right to growing freight passes with the ship. At all events, in an action like the present, the defendants were entitled to deduct, from what they had received, charges which the plaintiffs must have sustained, if they had retained possession of the vessel. The rule, therefore, which has been obtained for setting aside the nonsuit, must be discharged."

*Park*, J., was absent at chambers.

(*d*) By the statute 6 Geo. IV. c. 110, the regulations of former acts respecting the registry of ships have been consolidated; and as the provisions of this statute are very important, and must be carefully observed on the mortgage of any ship or vessel, it seems proper in this place to notice them, and state some of the principal enactments fully:—

Abstract of the late registry act, 6 Geo. 4, c. 110.

Sect. 1. That the act shall come into operation for the registering of *British* ships, from and after the 5th of January, 1826, except where otherwise hereinafter directed.

Sect. 2. That no ship or vessel shall be entitled to the privileges of a *British* registered ship, until the same is registered as after mentioned, and a certificate of such registry is obtained. The form of the certificate is directed to be as follows, viz.:—

"This is to certify, that in pursuance of an act passed in the sixth year of the reign of King George the Fourth, intituled 'An Act for the registering of *British* Vessels,' [*names, residence, and occupation of the subscribing*

BILL OF SALE OF A SHIP.

that mortgagee has agreed to lend *l.*

*tificate verbatim*, 6 Geo. IV. c. 110, s. 2); AND WHEREAS the said [***mortgagor***] hath requested the said [***mortgagee***]

---

*owners*], having taken and subscribed the oath required by this act, and having sworn that [he *or* they], together with [*names, residence, and occupations of non-subscribing owners*], [is *or* are] sole owner or owners, in the proportions specified on the back hereof, of the ship or vessel called the [*ship's name*], of [*place to which the vessel belongs*], which is of the burthen of [*number of tons*], and whereof [*master's name*] is master, and that the said ship or vessel was [*when and where built, or condemned as prize, referring to builder's certificate, judge's certificate, or certificate of last registry then delivered up to be cancelled*]; *And* [*name and employment of surveying officer*], having certified to us that the said ship or vessel has [*number*] decks, and [*number*] masts; that her length, from the fore-part of the main stern to the after-part of the stern-post aloft, is [*number of feet and inches*]; her breadth, at the broadest part, [*stating whether that be above or below the main wales*], is [*number of feet and inches*]; her height [*between decks, if more than one deck, or*] depth into the hold [*if only one deck*], is [*number of feet and inches*]; that she is, rigged [*how rigged*] with a [*standing or running*] bowsprit, is [*description of stern*] sterned, [*carvel or clinker*] built, has [*whether any or no*] gallery, and [*kind of head, if any*] head; *And* the said subscribing owners have consented and agreed to the above description, and having caused sufficient security to be given, as is required by the said act, the said ship or vessel called the [*name*] has been duly registered at the port of [*name of port*]. Certified under our hands, at the custom-house in the said port of [*name of port*], this [*date*] day of [*name of month*], in the year [*words at length*]."

(Signed) [A. B.] Collector.
[C. D.] Comptroller.

On the back of the certificate of registry there must be an account of the parts or shares held by each of the owners mentioned and described in the certificate, in the form and manner following:—

| Names of the several owners within mentioned. | Number of sixty-fourth shares held by each owner. |
|---|---|
| [*Name.*] | 32 |
| [*Name.*] | 16 |
| [*Name.*] | 8 |
| [*Name.*] | 8 |

(Signed) [A. B.] Collector.
[C. D.] Comptroller.

to lend him the sum of pounds, which he, the said [*mortgagee*], hath agreed to do, on having the repayment

BILL OF SALE OF A SHIP.
on security of a mortgage of the ship, bond, &c.

Sect. 3 provides what persons may register ships and grant certificates.

Sect. 4. Ships exercising the privileges of a *British* ship before they are registered and certificate obtained, are liable to forfeiture.

Sect. 5. Only ships built in the united kingdom, or in the British colonies or dominions, or which have been condemned by a competent court, are liable to be registered.

Sect. 6. Cases in which *British* ships lose their privileges by being repaired in foreign countries.

Sect. 7. Where, from combination of workmen, owners of British ships cannot get them repaired in British ports, the Privy Council may authorize repairs in foreign ports.

Sect. 8. Where, from combination of seamen, owners cannot procure proper crews for their ships (*i. e.* three-fourths at least of *British* seamen), the privy council may authorize the owners to proceed to sea with a less number of British sailors.

Sect. 9. Ships unseaworthy are to be deemed lost or broken up.

Sect. 10. British ships which have been captured by an enemy, shall never again be entitled to be registered, or enjoy former privileges.

Sect. 11. Ships are to be registered at the port to which they belong, except under special circumstances, and that books of registers shall be kept at each port, and accounts of certificates returned to the customs.

Sect. 12. Whenever an owner shall have transferred his share in a registered ship or vessel, the ship or vessel shall be registered *de novo*, before such ship or vessel shall sail or leave her port; but if time will not allow of this, she may go *one* voyage, with a permission from the collector and controller of the port indorsed on the former certificate.

Sect. 13. No person having taken an oath of allegiance to a foreign state, or residing in a foreign country, unless an agent for or partner in a British house of trade, shall be entitled to any share in a British registered ship.

Sects. 14 and 15. Nature and form of oaths required by subscribing owners prior to the registry of ships.

Sect. 16. Mode in which ships are to be surveyed previously to being registered.

Sects. 17, 18, 19, and 20. How the tonnage of ships and vessels is to be ascertained.

Sect. 21. Nature of bond required to be given to the crown by the owners and masters of vessels at the time of their registry. The condition of the bond being to secure the delivery up of the certificate, in case the

BILL OF SALE OF A SHIP.

thereof, with interest in the mean time, secured by the bond and covenant of the said [*mortgagee*], and by a

---

vessel should lose or forfeit her privileges as a *British* ship, and in other specified cases.

Sect. 22. When the master of a ship is changed, the certificate is to be delivered up, that the necessary indorsements may be made thereon.

Sect. 23. Penalties imposed on persons keeping possession of certificates after they ought to be given up.

Sect. 24. Names of vessels not to be altered, and to be painted on the sterns.

Sect. 25. Persons applying to register ships, must furnish the builder's certificate of the particulars of it, and take an oath.

Sect. 26. Provisions for registering *de novo*, and granting fresh certificates in case former certificates should be lost or mislaid.

Sect. 27. Mode of proceeding if masters of vessels or other persons improperly detain certificates of registry.

Sect. 28. Alterations in ships which render registry *de novo* necessary.

Sects. 29 and 30. Provisions as to the registry of vessels taken and condemned as prizes, or forfeited for breach of the laws against the slave-trade.

How property in a ship is to be transferred.

Sect. 31. "That when and so often as the property in any ship or vessel, or any part thereof, belonging to any of his majesty's subjects, shall, after registry thereof, be sold to any other or others of his majesty's subjects, the same shall be transferred by bill of sale, or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof; otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or in equity. *Provided always*, that no bill of sale shall be deemed void by reason of any error in such recital, or by the recital of any former certificate of registry instead of the existing certificate, provided the identity of the ship or vessel therein intended be effectually proved thereby."

Property in ships to be divided into sixty-four parts, or shares.

Sect. 32. "That the property in every ship or vessel, of which there are more than one owner, shall be taken and considered to be divided into sixty-four parts or shares, and the proportion held by each owner shall be described in the registry as being a certain number of sixty-fourth parts, or shares; and that no person shall be entitled to be registered as an owner of any ship or vessel in respect of any proportion of such ship or vessel, which shall not be an integral or sixty-fourth part or share of the same; and, upon the first registry of any ship or vessel, the owner or owners who shall take and subscribe the oath required by this act, before registry be made, shall also declare upon oath the number of such parts or shares then

mortgage in manner hereinafter mentioned, of the said ship or vessel, of which he is owner or proprietor as

BILL OF SALE OF A SHIP.

---

held by each owner. *Provided always*, that if it shall at any time happen, that the property of any owner or owners in any ship or vessel cannot be reduced, by division, into any number of integral sixty-fourth parts or shares, it shall and may be lawful for the owner or owners of such fractional parts as shall be over and above such number of integral sixty-fourth parts or shares, into which such property in any ship or vessel can be reduced by division, to transfer the same one to another, or jointly, to any new owner, by memorandum upon their respective bills of sale, or by fresh bill of sale, without such transfer being liable to any stamp duty:* *Provided also*, that the right of such owner or owners to such fractional parts, shall not be affected by reason of the same not having been registered. *Provided also*, that it shall be lawful for any number of such owners, named and described in such registry, being partners in any house or copartnership actually carrying on trade in any part of his majesty's dominions, to hold any ship or vessel, or any share or shares of any ship or vessel, in the name of such house or copartnership, as joint-owners thereof, without distinguishing the proportionate interest of each of such owners; and that such ship or vessel, or the share or shares thereof, so held in copartnership, shall be deemed and taken to be partnership property to all intents and purposes, and shall be governed by the same rules, both in law and equity, as relate to and govern all other partnership property in any other goods, chattels, and effects whatsoever."

Smaller portions than a sixty-fourth part or share may be conveyed without stamp duty.

Partners may hold ships or shares without distinguishing the proportionate interest of each partner.

Sect. 33. "That no greater number than thirty-two persons shall be entitled to be legal owners, at one and the same time, of any ship or vessel, as tenants in common, or to be registered as such: *Provided always*, that nothing herein contained shall affect the equitable title of minors, heirs, legatees, creditors, or others, exceeding that number, duly represented by, or holding from, any of the persons within the said number, registered as legal owners of any share or shares of such ship or vessel: *Provided also*, that if it shall be proved to the satisfaction of the commissioners of his ma-

Only thirty-two persons to be legal owners of any ship at one time; but this is not to affect equitable interests. Provisions as to joint-stock companies.

---

* This section of the late act was probably prepared in ignorance of the previous act of the same session, 6 Geo. IV. c. 41, by which all stamp duties in respect "of any bill of sale, or any conveyance, assignment, or other deed or instrument whatsoever, for the sale, transfer, or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel," were repealed.

Stamp.

BILL OF SALE OF A SHIP.

and that a bond of even date has been given.

aforesaid; And whereas, in consideration of the sum of pounds, by the said [*mortgagee*] to the said

---

jesty's customs, that any number of persons have associated themselves as a joint-stock company, for the purpose of owning any ship or vessel, or any number of ships or vessels, as the joint property of such company, and that such company have duly elected or appointed any number, not less than three, of the members of the same, to be trustees of the property in such ship or vessel, or ships or vessels, so owned by such company, it shall be lawful for such trustees, or any three of them, with the permission of such commissioners, to take the oath required by this act, before registry be made, except that, instead of stating therein the names and descriptions of the other owners, they shall state the name and description of the company to which such ship or vessel, or ships or vessels, shall in such manner belong."

Sect. 34. When ships previously registered are registered *de novo* under this act, the number of shares held by each owner shall be registered, as far as practicable; but, if unknown, the ship may be registered notwithstanding.

Sect. 35. The shares, however, must afterwards be registered, and within a given time.

Sect. 36. No stamp duty payable for the first registry under this act of ships previously registered.

Bills of sale not effectual until produced to officers of customs, and entered in book of registry;

Sect. 37. "That no bill of sale, or other instrument in writing, shall be valid and effectual, to pass the property in any ship or vessel, or in any share thereof, or for any other purpose, until such bill of sale, or other instrument in writing, shall have been produced to the collector and comptroller of the port at which such ship or vessel is registered, or to the collector and comptroller of any other port at which she is about to be registered, *de novo*, as the case may be, nor until such collector and comptroller respectively shall have entered in the book of registry, or in the book of intended registry, of such ship or vessel, as the case may be (and which they are respectively hereby required to do, upon the production of the bill of sale, or other instrument, for that purpose), the name, residence, and description of the vendor or mortgagor, or of each vendor or mortgagor, if more than one, the number of shares transferred, and the name, residence, and description of the purchaser or mortgagee, or of each purchaser or mortgagee, if more than one, and the date of the bill of sale, or other instrument, and of the production of it; and further, if such ship or vessel is not about to be registered, *de novo*, the collector and comptroller of the port where such ship is registered shall, and

[*mortgagor*] paid, as hereinafter is mentioned, the said [*mortgagor*] hath, by his bond, &c. (*recital of bond, as* BILL OF SALE OF A SHIP.

---

they are hereby required to indorse the aforesaid particulars of such bill of sale, or other instrument, on the certificate of registry of the said ship or vessel, when the same shall be produced to them for that purpose, in manner and to the effect following; *videlicet*,—Custom-house [*port and date; name, residence, and description of vendor or mortgagor*], has transferred, by [*bill of sale, or other instrument*], dated [*date; number of shares*], to [*name, residence, and description of purchaser or mortgagee*].

and indorsement thereof on the certificate of registry.

Form of such indorsement.

" [A. B.] Collector.

" [C. D.] Comptroller.

And forthwith to give notice thereof to the commissioners of customs; and, in case the collector and comptroller shall be desired so to do, and the bill of sale, or other instrument, shall be produced to them for that purpose, then the said collector and comptroller are hereby required to certify, by indorsement, upon the said bill of sale or other instrument, that the particulars before mentioned have been so entered in the book of registry, and indorsed upon the certificate of registry, as aforesaid."

Notice thereof to be given to the commissioners of customs.

Sect. 38. "That when and so soon as the particulars of any bill of sale, or other instrument, by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry, as aforesaid, the said bill of sale, or other instrument, shall be valid and effectual, to pass the property thereby intended to be transferred, as against all and every person and persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees, who shall first procure the indorsement to be made upon the certificate of registry of such ship or vessel, in manner hereinafter mentioned."

On entry, bill of sale to be valid, except as against subsequent purchasers or mortgagees getting their bills of sales first indorsed on the certificates.

Sect. 39. "That when and after the particulars of any bill of sale, or other instrument, by which any ship or vessel, or any share or shares thereof, shall be transferred, shall have been so entered in the book of registry, as aforesaid, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale, or instrument purporting to be a transfer by the same vendor or mortgagor, or vendors or mortgagors, of the same ship or vessel, or share or shares thereof, to any other person or persons, unless thirty days shall elapse, from the day on which the particulars of the former bill of sale, or other instrument, were entered in the book of registry; or in case the ship or vessel was absent from the port to which she belonged, at the time when the particulars of such former bill of sale, or other instrument, were entered in the book of registry, then, unless thirty days shall have elapsed from the day on which the ship or vessel arrived at the port to which the same belonged; and in case the par-

When a bill of sale has been entered for any shares, time to be allowed for indorsing certificate of registry, before any other bill of sale for the same shall be entered.

BILL OF SALE OF A SHIP.

Witnessing part.

*ante*, p. 330, 436). NOW THIS INDENTURE WITNESSETH, (*e*) that in consideration of the sum of pounds, of lawful

---

ticulars of two or more such bills of sale, or other instrument, as aforesaid, shall at any time have been entered in the book of registry of the said ship or vessel, the collector and comptroller shall not enter in the book of registry the particulars of any other bill of sale, or other instrument, as aforesaid, unless thirty days shall in like manner have elapsed, from the day on which the particulars of the last of such bills of sale, or other instruments, were entered in the books of registry, or from the day on which the ship or vessel arrived at the port to which she belonged, in case of her absence, as aforesaid; and in every case where there shall at any time happen to be two or more transfers, by the same owner or owners of the same property, in any ship or vessel entered in the book of registry, as aforesaid, the collector and comptroller are hereby required to indorse, upon the certificate of registry of such ship or vessel, the particulars of that bill of sale, or other instrument, under which the person or persons claims or claim property, who shall produce the certificate of registry for that purpose, within thirty days next after the entry of his said bill of sale, or other instrument, in the book of registry, as aforesaid, or within thirty days next after the return of the said ship or vessel to the port to which she belongs, in case of her absence at the time of such entry, as aforesaid; and, in case no person or persons shall produce the certificate of registry, within either of the said spaces of thirty days, then it shall be lawful for the collector and comptroller, and they are hereby required, to indorse, upon the certificate of registry, the particulars of the bill of sale, or other instrument, to such person or persons as shall first produce the certificate of registry for that purpose, it being the true intent and meaning of this act, that the several purchasers and mortgagees of such ship or vessel, or share or shares thereof, when more than one appear to claim the same property, shall have priority one over the other, not according to the respective times when the particulars of the bill of sale, or other instrument, by which such property was transferred to them, were entered in the book of registry, as aforesaid, but according to the time when the indorsement is made upon the certificate of registry, as aforesaid. *Provided always*, that if the certificate of registry shall be lost or mislaid, or shall be detained by any person whatever, so that the indorsement cannot in due time be made thereon, and proof thereof shall be made by the purchaser or mortgagee, or his known agent,

Power to commissioner to extend the time where the certificates are lost or mislaid.

---

(*e*) The covenant to pay is sometimes made the first witnessing part. See title TRUST DEEDS, in the eighth volume.

money of Great Britain and Ireland, by the said [*mortgagee*] to the said [*mortgagor*] in hand well and truly paid,

BILL OF SALE OF A SHIP.

Mortgagor, in consideration of *l.* bargains and sells to mortgagee,

to the satisfaction of the commissioners of his majesty's customs, it shall be lawful for the said commissioners to grant such further time as to them shall appear necessary for the recovery of the certificate of registry, or for the registry, *de novo*, of the said ship or vessel, under the provisions of this act; and thereupon the collector and comptroller shall make a memorandum in the book of registers of the further time so granted, and during such time no other bill of sale shall be entered for the transfer of the same ship or vessel, or the same share or shares thereof."

Bills of sale may be produced, after entry, at other ports than those to which vessels belong.

Sect. 40. "That if the certificate of registry of such ship or vessel shall be produced to the collector and comptroller of any port where she may then be, after any such bill of sale shall have been recorded at the port to which she belongs, together with such bill of sale, containing a notification of such record, signed by the collector and comptroller of such port, as before directed, it shall be lawful for the collector and comptroller of such other port to indorse on such certificate of registry (on being required so to do), the transfer mentioned in such bill of sale; and such collector and comptroller shall give notice thereof to the collector and comptroller of the port to which such ship or vessel belongs, who shall record the same in like manner, as if they had made such indorsement themselves, but inserting the name of the port at which such indorsement was made: *Provided always*, that the collector and comptroller of such other port shall first give notice to the collector and comptroller to which such ship or vessel belongs, of such requisition made to them, to indorse the certificate of registry, and the collector and comptroller of the port to which such ship or vessel belongs shall thereupon send information to the collector and comptroller of such other port, whether any and what other bill or bills of sale have been recorded in the book of the registry of such ship or vessel; and the collector and comptroller of such other port, having such information, shall proceed in manner directed by this act, in all respects, to the indorsing of the certificate of registry, as they would do, if such port were the port to which such vessel belonged."

Transfers indorsed on the certificate of registry.

Previous notice to officers at the port of registry.

In what case, on registry *de novo*, bill of sale produced.

Sect. 41. "That, if it shall become necessary to register any ship or vessel *de novo*, and any share or shares of such ship or vessel shall have been sold since she was last registered, and the transfer of such share or shares shall not have been recorded and indorsed in manner hereinbefore directed, the bill of sale thereof shall be produced to the collector and comptroller of his majesty's customs, who are to make registry of such ship or vessel; otherwise such sale shall not be noticed in such registry *de novo*, except as hereinafter excepted: *Provided always*, that upon the future production of such bill of sale, and of the existing certificate of registry, such transfer shall

Bill of sale previous to registry afterwards recorded.

BILL OF SALE OF A SHIP.

at or immediately before the sealing and delivery of these presents (the receipt, &c.), He, the said [*mortgagor*], Hath

---

and may be recorded and indorsed, as well after such registry *de novo* as before."

Registry *de novo* may be made on any change of property, if the owner desires it.

Sect. 42. "That if, upon any change of property in any ship or vessel the owner or owners shall desire to have the same registered *de novo*, although not required by this act, and the owner or proper number of owners shall attend at the custom-house at the port to which such ship or vessel belongs for that purpose, it shall be lawful for the collector and comptroller of his majesty's customs at such port to make registry *de novo* of such ship or vessel at the same port, and to grant a certificate thereof, the several requisites hereinbefore in this act mentioned and directed being first duly observed and complied with."

Sect. 43 provides that copies of oaths and extracts from the books of registry may be admitted as evidence, without the production of the originals or the attendance of the collector or comptroller.

Where vessels or shares sold in absence of owners without formal powers,

Sect. 44. "That, if any ship or vessel, or the share or shares of any owner thereof who may be out of the kingdom, shall be sold in his absence, by his known agent or correspondent, under his directions either expressed or implied, and acting for his interest in that behalf, and such agent or correspondent who shall have executed a bill of sale to the purchaser of the whole of such ship or vessel, or of any share or shares thereof, shall not have received a legal power to execute the same, it shall be lawful for the

Commissioners may permit record of such sales or registry *de novo*; so in other cases where bills of sale cannot be produced.

commissioners of his majesty's customs, upon application made to them, and proof to their satisfaction of the fair dealings of the parties, to permit such transfer to be registered, if registry *de novo* be necessary, or to be recorded and indorsed, as the case may be, in manner directed by this act, as if such legal power had been produced; and if it shall happen that any bill of sale cannot be produced, or if, by reason of distance of time, or the absence or death of parties concerned, it cannot be proved that a bill of sale for any share or shares in any ship or vessel had been executed, and registry *de novo* shall have become necessary, it shall be lawful for the commissioners of his majesty's customs, upon proof to their satisfaction of the fair dealings of the parties, to permit such ship or vessel to be registered *de novo*, in like manner as if a bill of sale for the transfer of such share or shares had

Proviso for security to produce legal powers or to abide further claims.

been produced: *Provided always*, that in any of the cases herein mentioned good and sufficient security shall be given to produce a legal power or bill of sale within a reasonable time, or to abide the future claims of the absent owner, his heirs and successors, as the case may be; and at the future request of the party whose property has been so transferred, without the production of a bill of sale from him or from his lawful attorney, such bond shall be available for the protection of his interest, in addition to any powers or rights

granted, bargained, sold, and assigned, (*f*) *And* by these presents Doth grant, bargain, sell, and assign, unto the

BILL OF SALE OF A SHIP.

---

which he may have in law or equity against the ship or vessel, or against the parties concerned, until he shall have received full indemnity for any loss or injury sustained by him."

Transfer by way of mortgage.

Sect. 45. "That when any transfer of any ship or vessel, or of any share or shares thereof, shall be made only as a security for the payment of a debt or debts, either by way of mortgage, or of assignment to a trustee or trustees for the purpose of selling the same for the payment of any debt or debts, then and in every such case the collector and comptroller of the port where the ship or vessel is registered shall in the entry in the book of registry, and also in the indorsement on the certificate of registry, in manner hereinbefore directed, state and express that such transfer was made only as a security for the payment of a debt or debts, or by way of mortgage or to that effect; and the person or persons to whom such transfer shall be made, or any other person or persons claiming under him or them as a mortgagee or mortgagees, or a trustee or trustees only, shall not by reason thereof be deemed to be the owner or owners of such ship or vessel, or share or shares thereof; nor shall the person or persons making such transfer be deemed by reason thereof to have ceased to be an owner or owners of such ship or vessel, or share or shares, any more than if no such transfer had been made, except so far as may be necessary for the purpose of rendering the ship or vessel, or share or shares, so transferred, available by sale or otherwise for the payment of the debt or debts for securing the payment of which such transfer shall have been made."

Mortgagees not deemed owner.

Exception.

Transfers of ships for security of debts being registered, rights of mortgagees not affected by any act of bankruptcy of mortgagor, &c.

Sect. 46. "That when any transfer of any ship or vessel, or of any share or shares thereof, shall have been made as a security for the payment of any debt or debts, either by way of mortgage or of assignment, as aforesaid, and such transfer shall have been duly registered according to the provisions of this act, the right or interest of the mortgagee or other assignee, as aforesaid, shall not be in any manner affected by any act or acts of bankruptcy committed by such mortgagor or assignor, mortgagors or assignors, after the time when such mortgage or assignment shall have been so registered, as aforesaid, notwithstanding such mortgagor or assignor, mortgagors or assignors, at the time he or they shall so become bankrupt, as aforesaid, shall have in his or their possession, order and disposition, and shall be the reputed owner or owners of the said ship or vessel, or the share or shares thereof, so by him or them mortgaged or assigned, as aforesaid, but that such mortgage or assignment shall take place of, and be preferred

---

(*f*) The word "assigned" is sometimes omitted.

BILL OF SALE OF A SHIP.

said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, the said ship or vessel, called the , whereof the said is master, and which is now on a voyage to , and whereof he, the said [*mortgagee*], is sole owner or proprietor, as aforesaid, *Together* with all and singular the masts, sails, sail-yards, anchors, cables, standing and running rigging, ropes, cords, cannon, fire-arms, gunpowder, shot, artillery, ammunition, provisions, stores, tackle, apparel, boats, oars, furniture, materials, appendages, and appurtenances whatsoever, to the said ship or vessel in anywise belonging or appertaining; *And* all the right, title, interest, property, profit, possession, claim, and demand whatsoever, of him, the said [*mortgagor*], in, to, out of, or upon the same ship or vessel, and premises, and every or any part thereof, To HAVE, HOLD, take, and enjoy the said ship or vessel, and all and singular other the premises hereby bargained, sold, and assigned, or intended so to be, with the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns; *But* subject nevertheless to the proviso or agreement for redemption hereinafter contained, (that is to say); PROVIDED ALWAYS, and it is hereby agreed and declared, (*g*)

the ship,

with masts, sails, &c.

*Habendum* to mortgagee, but subject to redemption.

Proviso for redemption.

---

to, any right, claim, or interest which may belong to the assignee or assignees of such bankrupt or bankrupts in such ship or vessel, or share or shares thereof, any law or statute to the contrary thereof notwithstanding."

Sect. 47 requires the commissioners of customs in Scotland and Ireland to transmit at the end of every month, to the commissioners of customs in England, copies of all certificates granted by them within the limits of their commission.

Sect. 48 enacts, that it shall be lawful for the governors of colonies and other places to stay proceedings in suits regarding registers, if they shall see just cause, until his majesty's pleasure shall be known.

Sect. 49 declares a false oath, in any of the matters required to be verified, perjury, and counterfeiting or altering certificates liable to a penalty of 500*l.*

Sect. 50 directs in what manner the penalties are to be recovered.

---

(*g*) If a power of sale is intended to be given, it may come in at the *end* of this proviso. See a form, *ante*, pp. 312, 374.

BILL OF SALE OF A SHIP.

that if the said [*mortgagor*], his heirs, executors, or administrators, shall and do, on the day of , now next ensuing, well and truly pay, &c. (*usual proviso for redemption and re-assignment, as ante*, p. 373); *And* the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following: (that is to say), *That* he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will, on the day of , now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents; *And* that he, the said [*mortgagor*], (*h*) now hath in himself good right and full power to bargain, sell, and assign the said ship or vessel, and premises hereby bargained, sold, and assigned, or intended so to be, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And* that, if default shall be made in payment of the said sum of pounds, or the interest thereof, or any part thereof, contrary to the aforesaid proviso and covenant for payment thereof, respectively, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to enter into and take possession of, and quietly to hold and occupy the said ship or vessel, and premises, hereby bargained, sold, and assigned,

Covenant by mortgagor for payment of principal and interest.

That he has good right to assign the ship.

For quiet enjoyment after default.

---

(*h*) The following may come in here:—

"  is now rightfully and absolutely possessed of and entitled to the said ship or vessel and premises, hereby bargained, sold, and assigned, or intended so to be, and their appurtenances; *And* that he, the said [*mortgagor*]," &c.

BILL OF SALE OF A SHIP.

or intended so to be, with the appurtenances, for his and their own benefit, without any interruption, claim, or demand whatsoever, of, from, or by the said [*mortgagor*], his executors, administrators, or assigns, or any other person or persons whomsoever; *And* that free and clear, and freed and clearly released, and for ever discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, and administrators, saved harmless and indemnified, from and against all assignments, charges, and incumbrances whatsoever; *And further*, that he, the said [*mortgagor*], his executors and administrators, and all and every other persons and person having or claiming, or to have or claim, any right or interest, in or to the said ship or vessel, and premises hereby bargained, sold, and assigned, or intended so to be, or any part thereof, shall and will, at all times after such default shall have been made in payment of the said sum of pounds, and interest, or any part thereof, as hereinbefore is mentioned, upon the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, or administrators, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and things, for the better bargaining, selling, assigning, and confirming, of the said ship or vessel, and premises hereby bargained, sold, and assigned, or intended so to be, and the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required; (*i*) PROVIDED ALWAYS, *And* it is hereby agreed and declared, that it shall be lawful for the said [*mortgagor*], his executors or administrators, peaceably and quietly to have, hold, possess, and enjoy the said ship or vessel and premises hereby bargained, sold, and assigned, or intended so to be, with the appurtenances, for his and their own benefit, until default shall be made in

free from incumbrances;

and for further assurance.

Proviso for quiet enjoyment, by mortgagor, until default.

(*i*) For a bill of sale of a ship on a purchase, see title PURCHASE DEEDS, in the seventh volume.

payment of the said sum of pounds, or the interest thereof, or some part thereof respectively, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent, &c. without any interruption, claim, or demand whatsoever, of or by the said [*mortgagee*], his executors or administrators, or any person or persons claiming, or to claim, by, from, or under him, them, or any of them. IN WITNESS, &c.

BILL OF SALE OF A SHIP.

---

ASSIGNMENT OF A SHIP FOR SECURING A RUNNING ACCOUNT.

ASSIGNMENT *of a* SHIP, *employed in the Coal Trade, to the Chief Proprietor of a* COLLIERY, *In Trust, for securing to himself and the other Proprietors of the Colliery, all such Sums of Money as may be owing from the Mortgagor for Coals, &c. with interest.* (*a*)

THIS INDENTURE, made the day of , BETWEEN [*mortgagor*], of, &c. of the one part; and [*mortgagee*], of, &c. of the other part; WHEREAS the said [*mortgagor*] is the sole owner of the ship or vessel called the " ," hereinafter particularly described, which has been duly registered at the port of , and a certificate of which registry is in the words or figures, or to the effect following (*copy of certificate*); AND WHEREAS the said [*mortgagee*], and others, joint owners with him, are possessed of, and work and carry on, a certain colliery or coal mine, called "the Colliery;" *And* the said [*mortgagor*] hath become a fitter for the sending of the coals of the said colliery, and, by reason of such engagement, is now indebted to the said [*mortgagee*], and others, the owners of the said colliery, and will, from time to

Parties.

Recites that mortgagor is sole owner of the ship;

that mortgagee and others are possessed of a colliery, called the colliery;

that mortgagor is and may be indebted to the owners of the colliery in divers sums of money, for coals, &c.;

(*a*) This precedent, the editor is informed, was drawn by a conveyancer of great eminence. It does not appear to be prepared in the best possible manner; but may, nevertheless, be found very useful. For some practical observations on deeds securing running accounts, see the two next precedents.

ASSIGNMENT OF A SHIP FOR SECURING A RUNNING ACCOUNT.

time, hereafter become indebted to the said [*mortgagee*], and others, the owners of the said colliery for the time being, in considerable sums of money, for coals sold and delivered, and to be sold and delivered to him, from time to time, during his engagement, as such fitter, as aforesaid, from the said colliery; *And* for securing all such sum and sums of money in which the said [*mortgagor*] is or shall be so indebted to the said [*mortgagee*], and others, the owners of the said colliery for the time being, it hath been agreed that the said [*mortgagor*] should assign the said ship or vessel, with the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, upon the trusts hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, and of the sum of 10*s.* &c., HE, the said [*mortgagor*], *Hath* granted, bargained, sold, assigned, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, and set over, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THOSE sixty-four sixty-fourth parts or shares (being the entirety) of and in *All that* the said ship or vessel called the "  ," particularly mentioned and described in and by the above-recited certificate of registry, and whereof [  ] is now, or late was, master; Together with all and singular the masts, &c. as *ante*, p. 472; *And* all the right, &c.; TO HAVE AND TO HOLD the said sixty-four sixty-fourth parts or shares of and in the said ship or vessel, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, *Upon* the trusts following (that is to say), *Upon trust* that he, the said [*mortgagee*], his executors or administrators, do and shall, of his or their own proper authority, and without the consent or further concurrence of the said [*mortgagor*], his executors or administrators, immediately or at any time after default shall be made in payment, by the said [*mortgagor*], his executors or administrators, to the said [*mortgagee*], his executors, administrators, or assigns, or other the owner or owners for the time being, of the said colliery, or his or their agent or agents, or any other person or persons by him or them appointed or employed in that behalf, of any sum or sums of money, which now is

and that, for securing such sums, he has agreed to assign the ship to mortgagee, in trust, as after mentioned.

Witnessing part.

The mortgagor assigns

the ship, &c.;

to mortgagee, upon the trusts after mentioned; viz.

upon trust, at any time after default in payment of the moneysecured, to sell the ship, &c.;

ASSIGNMENT OF A SHIP FOR SECURING A RUNNING ACCOUNT.

or are, or shall or may, at any time or times hereafter become due and owing, or payable, from the said [*mortgagor*], his executors or administrators, to the said [*mortgagee*], his executors or administrators or other the owner or owners for the time being, of the said colliery, for coals sold and delivered, or to be sold and delivered, to him, the said [*mortgagor*], or to his order, or on the balance of any account or accounts for coals so sold and delivered, or to be sold and delivered, as aforesaid, or on account of any bills of exchange, promissory notes, or other securities, which he, the said [*mortgagor*], hath already drawn, made, or delivered, or which he, his executors or administrators, shall or may, at any time hereafter, draw, make, or deliver, or cause to be drawn, made, or delivered to or in favour of the said [*mortgagee*], his executors, or administrators, or other the owner or owners, for the time being, of the said colliery, or his or their agent or agents, or other the person or persons by him or them appointed or employed as aforesaid, for or in respect of coals so sold and delivered, or to be sold and delivered, as aforesaid, together with all interest, costs, charges, and expenses, consequent on the non-payment or non-acceptance of all and every, or any, such bills of exchange, promissory notes, and other securities, or any of them, or any other matter or thing relating thereto, make sale, and absolutely dispose of the said ship or vessel, and premises hereby assigned, or intended so to be, either by public auction or private contract, as he or they shall think fit, with liberty to buy in the said ship or vessel and premises, and to re-sell the same at any future auction, or by private contract, without being liable to answer for any loss or diminution of price, by reason of such re-sale; *And* do and shall assign and convey the same ship or vessel and premises, unto the person or persons who shall agree to become the purchaser or purchasers thereof, or as he, she, or they shall direct; *And* do and shall make, sign, seal, execute, and deliver, all such deeds and instruments in the law as shall or may be necessary or needful for that purpose; *And upon this further trust*, that he, the said [*mortgagee*], his executors or administrators, do and shall, by and out of the monies to arise from such sale or sales, as

and assign to purchasers;

and out of the money arising thereby, to pay the money secured, and the interest thereon.

ASSIGNMENT OF A SHIP FOR SECURING A RUNNING ACCOUNT.

aforesaid, in the first place deduct, retain, and pay the costs, charges, and expenses, which he or they shall be put to, in the execution of the trusts or powers hereby created, or in or about insuring the said ship or vessel and premises, as hereinafter is mentioned, if any such insurance shall be made, and which he, the said [*mortgagee*], his executors, administrators, and assigns, is and are hereby authorized to make, in case of the neglect of the said [*mortgagor*], his executors or administrators, in performing the covenant hereinafter contained, for the insurance thereof; *And*, in the next place, do and shall retain, and pay unto him, the said [*mortgagee*], his executors, administrators, or assigns, or other the owner or owners, for the time being, of the said colliery, or his or their agent or agents, or other the person or persons, for the time being, appointed or employed, as aforesaid, all such sum or sums of money (not exceeding (*b*), in the whole, at any one time, the sum of pounds), as shall be due and owing from the said [*mortgagor*], his executors or administrators, to the said [*mortgagee*], his executors, administrators, or assigns, or other the owner or owners, for the time being, of the said colliery, as aforesaid, or so much thereof as the same monies will extend to discharge; *And* subject to the trusts aforesaid, *Upon trust* to pay the surplus (if any), which shall remain, after such several payments, unto the said [*mortgagor*], his executors, administrators, or assigns (*Clauses, making trustee's receipts sufficient discharges, and making it unnecessary for purchasers to inquire into the propriety of sales, as ante*, p. 312.) And the said [*mortgagor*] *Doth* hereby for himself, his heirs, executors, and administrators, cove-

and pay the surplus to the mortgagor.

Covenant for payment;

As to proviso for limiting the amount secured.

(*b*) It is more usual to omit here the limitation of the amount secured, and to add a clause for that purpose at the end; which clause should extend to the *principal* monies only, and not to the interest or expenses. Indeed, it may be doubted whether any provision of the kind is necessary in an assignment, or other assurance, of a ship, since the late act, 6 Geo. IV. c. 41, has repealed all stamp duties, which were formerly imposed on transfers of ships or vessels; and, in other cases, the only object of the provision is to prevent payment of the *ad valorem* duty of 25*l.*, to which mortgages securing an indefinite sum are liable.

ASSIGNMENT OF A SHIP FOR SECURING A RUNNING ACCOUNT.

nant, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that, &c. (*Covenant for payment, on demand, of the monies secured nearly as in* p. 477.); *And* also that he, the said [*mortgagor*], his executors, administrators, or assigns, shall and will, so long as any monies shall remain secured by, or due and owing upon, this security, insure, and keep insured, upon the said ship or vessel hereby assigned, or intended so to be, the sum of pounds, at the least, against loss or damage by perils of the sea, and against all proper and necessary losses, in the name or names of the said [*mortgagee*], his executors, administrators, or assigns, or of the said [*mortgagor*], his executors, administrators, or assigns, or otherwise, as the said [*mortgagee*], his executors, administrators, or assigns, shall permit or direct, in some office or offices of insurance or club, to be approved or appointed by him or them, and shall and will, from time to time, renew and keep on foot such insurance, as aforesaid, and pay the premiums, expenses, or losses, to become due or payable, in respect of the same; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that all insurances whatsoever which are now made, or which may at any time hereafter be made, upon the said ship or vessel and premises, in whose name or names soever, against what loss or losses soever the same may be effected, shall be for the further and better securing the payment of the said sum and sums of money intended to be hereby secured; *And*, subject thereto, for the benefit of the said [*mortgagor*], his executors, administrators, and assigns. (*Covenants from the mortgagor that he has right to assign; that, in case of default, he will, on demand, give up possession of the ship, and will concur in a sale; for quiet enjoyment; for freedom from incumbrances; and for further assurance.*) IN WITNESS, &c.

and to insure against perils at sea, &c.

Declaration of trusts of the monies secured under the insurance.

Covenants for title.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

## ASSIGNMENT *of* LEASEHOLD *Premises to* TRUSTEES, *for securing to* BANKERS *the Balance of a* RUNNING ACCOUNT, *with interest on all* ADVANCES, *at 5l. per cent., from the time of making the same.* (*a*)

THIS INDENTURE, made the day of , 182 , BETWEEN the within-named [*surviving partners of*

Parties.

---

General observations on running securities.

(*a*) Securities of this description are very common, and the general opinion seems to be, that a banking or mercantile firm would, notwithstanding a change of partners, be deemed, in reference to a transaction of this nature, one and the same creditor, and that one stamp would be sufficient. It would, however, be improper not to notice that considerable doubts have been entertained on this point, and that there is at present no decision upon it. It is very evident that each change in the members of a firm, whether by the death or retirement of a member, or by the introduction of another person into the copartnership, constitutes a new firm; and it is certainly difficult to distinguish a security of the kind alluded to, from "a security for the payment to *different* persons of separate and distinct sums of money," which by the Stamp Act is clearly liable to a mortgage-duty stamp for each separate sum secured to each distinct party, and not to one stamp for the aggregate amount. The inconvenience and expense of changing or transferring the securities to a banking concern, on every variation in the members of the firm, would certainly be considerable; but the validity of the securities is a matter of much more serious consequence. So many deeds of the kind have been prepared, on the supposition that they can be made consistently with the provisions of the Stamp Act, that it is probable, if the question were discussed, they would be held to be valid; but whether this probability be sufficient to justify solicitors and counsel *acting* on it, should be well considered by every individual who may have to prepare or advise on such a security, or on a title derived under one. Another point which has arisen as to the proper stamps to be affixed on securities of this description, is whether they are not, in all cases, liable to a duty of 25*l.*, as for an indefinite advance, inasmuch as the sum

Stamps to which such deeds are liable.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

*the old firm*], of the first part; [*one executor of a deceased partner*], of, &c., and [*other executor of the deceased partner*], of, &c. (executors of the last will and testament of the within-named [*deceased partner*]), of the second part; the within-named [*mortgagor*], of the third part; the said [*one old partner*], and [*another old partner*], [*one new partner*], of, &c., [*another new partner*], of, &c., and the said [*other old partner*], of the fourth part; and [*one trustee*], of, &c., and [*other trustee*], of, &c., of the fifth part: WHEREAS the said [*deceased partner*] departed this life on or about the day of , having first duly made and published his last will and testament in writing, bearing date on or about the day of , and thereof appointed the said [*executors*], executors, who duly proved the said will in the prerogative court of the Archbishop of Canterbury, on the day of ; AND WHEREAS, upon the settlement of accounts between the said [*executors*], as the executors of the said [*deceased partner*], and the said [*surviving partners*], as his surviving copartners, it was agreed that the principal monies and interest due and owing on the security of the within-written (*b*) indenture, should belong exclusively to the said [*surviving partners*], as they, the said [*surviving partners*], do hereby respectively admit and acknowledge,

Recites the death of deceased partner, and appointment of his executors.

That, on the settlement of accounts between the executors of the deceased partner and his surviving partners, it was agreed that the monies secured by the within-deed should belong to the surviving copartners;

---

for which the mortgage or trust-deed is at one time a security, may be satisfied by subsequent payments by the debtor, and the mortgage or trust-deed must then be considered as satisfied, or it must be deemed a security for a new and additional sum, which may be due on a future balance; but in the case of *Williams* v. *Rawlinson*, J. B. Moore, 362, it was held by the Court of Common Pleas, that a bond given under similar circumstances, with a qualification that *the money secured thereby, or to be ultimately recoverable thereupon, should not exceed* 5000*l.*, was well stamped by having a mortgage *ad valorem* duty stamp for the sum of 5000*l.*

(*b*) The deed on which the above precedent was indorsed, was a simple mortgage of the premises to four persons, who were bankers and copartners, for securing a sum of pounds, then advanced, with interest. Upon the decease of one of these partners, a new copartnership was formed between the three surviving partners, a nephew of one of them, and a son of the deceased partner; and it was agreed that the future security should be made to extend to the members for the time being of the firm, and to cover further advances.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

testify and declare; AND WHEREAS, on or about the day of , the said [*surviving partners*] admitted the said [*one new partner*] and [*other new partner*], as partners into their copartnership business of bankers; *And* it was thereupon agreed that the principal monies and interest then due and owing to the said [*surviving partners*], on the security of the said within-written indenture, should belong to the said [*surviving and new partners*], as part of the capital and effects of their copartnership; AND WHEREAS there is now due and owing from the said [*mortgagor*] to the said [*surviving and new partners*], on the security of the said within-written indenture, for principal and interest, the sum of pounds, and no more, as they, the said [*surviving and new partners*], do hereby respectively admit and acknowledge, testify and declare; AND WHEREAS the said [*surviving and new partners*], as the bankers of the said [*mortgagor*], have lately discounted for the said [*mortgagor*] several bills of exchange, amounting together to the sum of pounds, and the said [*surviving and new partners*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the persons or person for the time being carrying on their said business of bankers, may, as the bankers (*c*) of the said

admittance of two new partners into the copartnership, and transfer of the aforesaid debt to the new firm;

that the principal and interest due on the security of the within deed amounts to *l.*;

that surviving and new partners, as the bankers of mortgagor, have discounted several bills of exchange, and may hereafter pay divers other sums of money to him, or on his account;

(*c*) From the observations of Lord *Eldon*, in *ex parte Watson*, 19 Ves. 459, and in *ex parte Marsh*, 2 Ross. 243, it seems that a security to three or four persons, being bankers, and the survivors or survivor of them, for all monies then due and thereafter to become due, will not extend to advances made by the firm, after a new partner has been introduced into the business, or one of the former partners has retired from it; and it is therefore necessary to be careful to provide for changes in the firm. The form in the text is, perhaps, the most generally used. In many instances the expression is—

"to [A.], [B.], [C.], and [D.], and the survivors and survivor of them, and the executors or administrators of such survivor, or their or his assigns, or their or his partner or partners, or other the person or persons for the time being constituting the firm of the said banking-house;"

but of course the forms in different precedents vary considerably. See another form, *post*, p. 488.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

[*mortgagor*], hereafter advance and pay to him, or on his account, divers sums of money, either in honouring his drafts, or in discounting or paying bills of exchange or promissory notes given, drawn, accepted, or indorsed by him, or otherwise; *And*, for the purpose of securing to the said [*surviving and new partners*], and the survivors and survivor of them, or the executors or administrators of such survivor, or the persons or person for the time being carrying on their said banking business, as aforesaid, all such sums of money as shall at any time hereafter be due and owing to them or him from the said [*mortgagor*], his executors or administrators, in respect of the said sum of pounds, so due and owing on the security of the said within-written indenture, as aforesaid, or upon a balance of accounts, or otherwise howsoever, with interest for the same, as hereinafter is mentioned, it hath been agreed that the said [*mortgagor*] should enter into the covenant hereinafter in that behalf contained, *And* that the messuage or tenement, piece of ground, policy or policies, fixtures, and premises, comprised in and assigned by the said within-written indenture, should be assigned to the said [*trustees*], upon the trusts hereinafter declared concerning the same; *And* the said [*executors*], as the executors of the said [*deceased partner*], have agreed, at the request of the said [*mortgagor and surviving partners*], to join in such assignment in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that, in pursuance and part performance of the said agreement, (*d*) and in consideration of the premises,

that, for the purpose of securing such sums as shall be owing to the new firm, in respect of the principal sum secured by the within-written indenture, or otherwise, it hath been agreed that the mortgagor should enter into the covenant hereinafter contained, and that the premises comprised in the within-written indenture should be assigned to trustees, upon the trusts after mentioned.

First witnessing part.

(*d*) When the security is drawn as a *mortgage*, the conveyance or assignment (according as the premises are freehold or leasehold) should form the first or only witnessing part. The following proviso for redemption and covenant for payment are taken from such a mortgage, and may be found useful:—

"PROVIDED ALWAYS, *And* it is hereby agreed and declared, between and by the said parties, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and *Do*, from time to time, or at any time hereafter,

Proviso for redemption.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

HE, the said [*mortgagor*], *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise,

---

upon demand,* for that purpose made by the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the partners or partner for the time being, of the said banking concern, well and truly pay, or cause to be paid, unto the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivors, or the partners or partner for the time being of the said banking concern, *All* such sum and sums of money as shall from time to time, or at any time hereafter, become due and owing, from the said [*mortgagor*] to the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivors, or the partners or partner for the time being of the said banking concern, as his bankers, upon balance of account, or otherwise, for monies to be advanced or paid by them, or any of them, unto or by the direction, or for the use or upon the account of the said [*mortgagor*], in honouring or paying the bills of exchange, checks, and drafts, which may be drawn by him, the said [*mortgagor*], upon the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivors, or the partners or partner for the time being, of the said banking concern, or in paying bills of exchange, checks, and drafts, given, drawn, accepted, or indorsed, by the said [*mortgagor*], or upon any other account, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the time, or respective times, of advancing and paying the same, without making any deduction or abatement out of the same sums and interest, or any part thereof, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever. *Then*, and in such case,

---

* It often is,

"within twenty days [*or* one month] after demand."

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

and agree with and to the said [*surviving and new partners*], and each of them, and their and each of their executors and administrators, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will, upon demand for that purpose made by the said [*surviving and new partners*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the persons or person for the time being carrying on their said banking business, as aforesaid, well and truly pay, or cause to be paid, unto the said [*surviving and new partners*], or the survivors, &c., or the persons, &c., all such sum or sums of money as shall for the time being be due and owing to them or him from the said [*mort-*

The mortgagor covenants with the mortgagee, to pay on demand all such sums of money as shall be due and owing from him to them;

---

and from and immediately after such payment shall be so made, as aforesaid, they, the said [*mortgagees*], their heirs or assigns, shall and will," &c. (*re-convey*, as *ante*, p. 282.) "And the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagees*], their executors and administrators, that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will, from time to time, or at any time hereafter, upon demand for that purpose made by the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the partners or partner for the time being of the said banking concern, pay, or cause to be paid, all such sum or sums of money as shall from time to time be found due to them, the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the partners or partner for the time being of the said banking concern, from him, the said [*mortgagor*], on balance of account or otherwise, as aforesaid, together with all such interest as shall from time to time be due and owing thereon, after the rate, and to be computed from the respective times aforesaid, according to the purport and effect of the aforesaid proviso or condition for payment thereof, and the true intent and meaning of these presents."

Covenant for payment in a mortgage for securing the balance of a running account on demand.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

*gagor*], his executors or administrators, for or in respect of the said sum of pounds, so due and owing on the security of the said within-written indenture, as hereinbefore is mentioned, or for or in respect of any monies which shall or may be hereafter advanced or paid by the said [*surviving and new partners*], or the survivors, &c., or the persons, &c., to the said [*mortgagor*], or on his account or by his direction, or in honouring his drafts, or in paying any bills of exchange or promissory notes which shall have been given, drawn, accepted, or indorsed by him, the said [*mortgagor*], or upon any account whatsoever, with interest for the same sum or sums of money after the rate of 5*l.* for 100*l.* by the year, to be computed from the time or times hereinafter mentioned, (that is to say), *As* to so much or such part thereof as shall be owing in respect of the said sum of pounds now due on the security of the said within-written indenture, as aforesaid, from the day of the date of these presents, *And* as to so much and such part or parts thereof as shall be owing in respect of monies to be hereafter advanced and paid, as aforesaid, from the time or respective times of advancing and paying the same; *And* shall and will make the said payments, without any deduction or abatement whatsoever, for or on account of any present or future taxes, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever: AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the said agreement, and in consideration of the premises, and of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*trustees*] to the said [*surviving partners*] paid, at, &c. (the receipt, &c.), THEY, the said [*surviving partners*], according to their estate, right, and interest, under or by virtue of the said within-written indenture, and so far as they can or may at law or in equity, but not further or otherwise, *And* at the request and by the direction of the said [*new partners*], and with the privity and approbation of the said [*executors of deceased partner*] and [*mortgagor*] (testified by their respectively being parties to and sealing and delivering these presents), *Have*, and every of them *Hath*, bargained, sold, and assigned, *And* by these presents *Do*,

with interest for the same, at the rate of 5*l.* per cent.;

without any deduction whatsoever.

Second witnessing part.

The surviving partners, according to their estate and interest under the within-written indenture, assign;

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

and every of them *Doth*, bargain, sell, and assign, *And* the said [*executors of deceased partner*], according to their estate, right, and interest, as such executors, as aforesaid, and so far as they can or may at law or in equity, but not further or otherwise, and at the request and by the direction of the said [*surviving partners*], and with the privity and approbation of the said [*new partners*], (testified, &c.), *Have*, and each of them *Hath*, bargained, sold, assigned, and released, *And* by these presents *Do*, and each of them *Doth*, bargain, sell, assign, and release, *And* the said [*mortgagor*] *Hath* granted, bargained, sold, assigned, and confirmed, *And* by these presents *Doth* grant, bargain, sell, assign, and confirm unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those the messuage or tenement, piece or parcel of ground, policies, fixtures, and premises, comprised in and assigned by the said within-written indenture, as aforesaid, and their appurtenances; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of them, the said [*surviving partners*], [*executors of deceased partner*], and [*mortgagor*], and each and every of them, in, to, out of, or upon the same premises, and every part thereof, TO HAVE AND TO HOLD the said messuage or tenement, piece or parcel of ground, and such other of the premises hereby assigned, or intended so to be, as are held under the within-recited indenture of lease of the day of , and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the residue and remainder which is now to come and unexpired of the within-mentioned term of sixty-one years, subject, nevertheless, to a certain indenture of under-lease of the said messuage or tenement, and premises, bearing date on or about the day of , and made between the said [*mortgagor*], of the one part, and [A. B.], of, &c., of the other part, for the term of years, at the yearly rent of pounds; AND TO HAVE AND TO HOLD the said policies, fixtures, and such other of the premises hereby assigned, or intended so to be, as are not held under the said within-recited indenture of lease of the day of

and the executors of the deceased partner, as such executors, assign and release;

and the mortgagor assigns and confirms unto the trustees

the premises comprised in the within-written indenture.

*Habendum* as to the leaseholds for the residue of the term;

and *habendum* as to the policies absolutely.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

, unto the said [*trustees*], their executors, administrators, and assigns, absolutely as their own goods and personal chattels; ***But,*** nevertheless, as to all the said premises hereby assigned, or intended so to be, (*e*) ***Upon*** and for the trusts, intents, and pur-

but as to all the assigned premises upon the trusts after mentioned, viz.

(*e*) The following trust is taken from a deed, whereby certain debts and other sums of money were assigned to a trustee for securing a running account:—

Trust for getting in and selling debts for securing a running account.

"***In trust*** for securing to the said [***bankers***], their executors, administrators, and assigns, and to the persons or person for the time being constituting the firm now described as the firm of , whoever such persons or person may be, and whatever may be the appellation of the said firm in such their partnership capacity, all sums of money now due and owing by the said [*mortgagor*] to the said [***bankers***], as such copartners as aforesaid, or which, in consequence of any acceptance or indorsement, or otherwise, are payable, or guaranteed to be paid, by the said [***bankers***], as such copartners as aforesaid, upon the account of the said [*mortgagor*], or which the said [***bankers***], their executors, administrators, or assigns, or other the person or persons for the time being constituting the firm now described as the firm of , whosoever such persons may be, or whatever may be the appellation of such firm, may, in their copartnership capacity, hereafter pay, or be engaged to pay, to or on the account of the said [*mortgagor*], with interest for the same sums of money respectively, after the rate of 5*l.* for every 100*l.* by the year, from the time of their severally becoming payable; ***For which end,*** intent, and purpose, it is hereby agreed, &c., that it shall be lawful for the said [*trustee*], his executors, administrators, or assigns, upon the request of the said [***bankers***], their executors, administrators, and assigns, and other the persons and person for the time being constituting the firm now described as the firm of , to call in, compel payment of, recover and receive, and give effectual discharges for, the sums of money and debts hereinbefore assigned, or in-

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

poses, hereinafter expressed and declared, concerning the same, (that is to say), *If* the principal monies and interest hereby covenanted to be paid, as aforesaid, shall be paid in manner hereinbefore mentioned, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents, *Then*, and in such case, *Upon trust* that they, the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, do and shall, at the request and costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, re-assign the said messuage or tenement, piece or parcel of ground, policies, fixtures, and premises, hereby assigned, or intended so to be, with their appurtenances, unto the said [*mortgagor*], his executors, administrators, or assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*trustees*], or either of them, or their or either of their executors, administrators, or assigns, so as for the doing thereof they or any of them be not compelled or compellable to go or travel from the place or places of their or any of their usual abode or dwelling; *But* if default shall be made in payment of the said principal monies and interest hereby covenanted to be paid, as aforesaid, or any part thereof respectively, *Then*, and in such case,

If the principal monies and interest covenanted to be paid, shall be paid as before mentioned,

upon trust to re-assign the premises to the mortgagor;

but if default shall be made in payment thereof, upon trust to sell.

---

tended so to be, and every or any of them, and every or any part thereof, or to sell, assign, or otherwise dispose of the same, either by public auction or by private contract, or (upon such request as aforesaid), to compromise, compound, adjust, and settle the same, upon such terms and in such manner as the said [*trustee*], his executors, administrators, or assigns, shall judge reasonable, and to apply the monies which shall come to his or their hands by virtue of these presents, in discharge of the money hereby secured, or intended so to be, or any part or parts thereof, and to render and pay over the surplus of the same respectively, unto the said [*mortgagor*], his executors, administrators, or assigns."

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

upon trust, &c. (*to sell, as ante*, p. 392) *(f)*; PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the parties hereto, that until default shall be made in payment of the principal monies and interest hereby secured, as aforesaid, or some part thereof respectively, contrary to the covenant hereinbefore contained for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful, to and for the said [*mortgagor*], his executors, administrators, and assigns, peaceably and quietly to have, hold, occupy, possess, and enjoy the said messuage, &c. hereby assigned or intended so to be, and their appurtenances, without any let, suit, trouble, interruption, or disturbance whatsoever, of, from, or by the said [*trustees*], or either of them, or their or either of their executors, administrators, or assigns, or any person or persons whomsoever, lawfully or equitably claiming or to claim by, from, through, or under

Proviso for quiet enjoyment by the mortgagor until default;

---

(*f*) Whether the security be made to trustees or to the bankers themselves, it is generally thought advisable to introduce a clause to the following effect:—

Clause making receipts of surviving partners sufficient discharges.

"PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the parties to these presents, that, upon payment of any sum or sums of money, under or by virtue of the proviso and covenant hereinbefore contained, the receipt or receipts of the said [*mortgagees*], or the survivors or survivor of them, or the executors or administrators of such survivor, or the partners or partner for the time being, of the said banking concern, shall be an effectual release and discharge, or effectual releases or discharges, for the monies in such receipt or receipts expressed or acknowledged to be received, notwithstanding any person or persons, not being a party or parties to these presents, nor signing such receipt or receipts, shall then be a partner or partners in the said banking concern, now carried on by the said [*mortgagees*], as aforesaid, or may be otherwise beneficially interested in such monies, or any part thereof, or notwithstanding any of them, the said [*mortgagees*] shall be then dead."

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

them or any of them (*proviso for changing trustees, &c., as ante*, pp. 319-20); *And* the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that while any monies shall remain due and owing on the security of these presents, he, the said [*mortgagor*], his executors, administrators, or assigns, shall and will pay the rent, and observe and perform the covenants and agreements, in the said within-recited indenture of lease of the day of , respectively reserved and contained, on the tenant's or lessee's part to be paid, observed, and performed, as and when the same ought to be paid, observed, and performed; *And* shall and will, at all times hereafter, save, defend, keep harmless, and indemnified, the said [*trustees*], their executors, administrators, and assigns, and every of them, from and against the payment of the said rent, and the observance and performance of the said covenants and agreements, and all actions, suits, claims, and demands whatsoever, for or on account thereof; *And further*, that while any monies shall remain due and owing on the security of these presents, he, the said [*mortgagor*], his executors, administrators, or assigns, shall and will keep the said messuage, &c. hereby assigned, or intended so to be, insured in some respectable insurance office against loss or damage by fire, in the sum of pounds, in the name or names of the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns, of such survivor; *And* that, if he or they shall at any time neglect or refuse so to do for three days after being thereunto required, it shall be lawful for the said [*trustees*], or the survivor of them, or the executors, administrators, or assigns of such survivor, to keep the said messuage, &c., hereby assigned, or intended so to be, insured in manner aforesaid, *And* out of the rents, issues, and profits of the same messuage, &c., to raise, retain, and pay the costs and expenses of or attending such insurance; *And lastly*, that since the execution of the said within-written indenture, he, the said [*mortgagor*], hath not done, &c. (*any act whereby the premises are incumbered, and for fur-*

and for changing trustees.

Covenants by the mortgagor to pay the rent and perform the covenants reserved and contained in the lease;

and to indemnify the trustees therefrom.

For insuring the premises against loss or damage by fire in the sum of *l.*

That, if he shall neglect or refuse so to do, it shall be lawful for the trustees to insure the premises, and pay the expenses thereof out of the rents and profits.

And that, since the execution of the within-written indenture, the mortgagor has done no act to incumber.

TO BANKERS, FOR SECURING A RUNNING ACCOUNT.

Clause limiting the amount to be secured by the mortgage.

*ther assurance, see ante,* p. 291)(*g*); PROVIDED ALWAYS, and it is hereby lastly agreed and declared, between and by the said parties hereto, that the total amount of the principal monies secured by, or to be ultimately recoverable upon or by virtue of these presents, (*h*) shall not exceed the sum of pounds. (*i*) IN WITNESS, &c.

---

(*g*) It would have been better to repeat the covenants for title, as some persons might doubt how far the covenants for title contained in the deed on which this precedent was indorsed would be available in respect to the sums advanced by the new firm on the new security.

(*h*) If the premises consist of buildings, and there is a provision for insurance against fire, add here—

"exclusively of any sum or sums which shall be advanced for insurance against loss or damage by fire under the provision hereinbefore in that behalf contained."

(*i*) For bonds to bankers securing running accounts, see Vol. III. pp. 232, 235, 446, 460.

ASSIGNMENT *of a* LEASEHOLD *Piece of Ground, with Buildings partly erected thereon, for securing by way of* MORTGAGE *all sums which should be advanced for* COMPLETING *the* BUILDINGS, *not exceeding the Sum of pounds, and Interest.* (POWER *of* SALE, &c.)

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

THIS INDENTURE, made, &c., BETWEEN [*mortgagor*], of, &c. of the first part; [*mortgagee*], of, &c. of the second part; [*trustees for mortgagee*], of, &c. of the third part: WHEREAS, by an indenture of lease, bearing date, &c., and made, &c., between [A. B.], gentleman, of the one part, and the said [*mortgagor*], of the other part, the said [A. B.], (in consideration of the rent and covenants thereinafter reserved and contained on the part of the said [*mortgagor*], his executors, administrators, and assigns, to be paid, observed, and performed), did demise, lease, and set *All that* piece or parcel of land or ground, situate, &c., with the rights of way and appurtenances thereto belonging, unto the said [*mortgagor*], his executors, administrators, and assigns, from the day of , then last past, for the term of eighty-one years from thence next ensuing, at and under the rent of a pepper-corn for and during the first year of the said term, and at and under the yearly rent of 40*l.* for and during every subsequent year of the same term; *And*, by the said indenture, the said [*mortgagor*] covenanted with the said [A. B.], his heirs and assigns (amongst divers other things), that he, the said [*mortgagee*], his executors, administrators, or assigns, should and would (*set out the covenant for building nearly verbatim*, see Vol. IV. p. 501). AND WHEREAS, since the date and execution of

Parties.

Recital of the lease of a piece of ground to the mortgagor for eighty-one years;

the covenant to build six houses thereon;

that, since the date of the

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

lease the mortgagor has begun the buildings agreed to be erected;

and that the mortgagee has agreed to advance him money for completing the buildings, to the extent of *l.*, on having the same, with interest, secured as after mentioned.

Witnessing part.

The mortgagor assigns to the trustees,

the said hereinbefore-recited indenture, the said [*mortgagor*] hath, in pursuance of his covenant in that behalf therein contained, commenced the erection of six messuages or dwelling-houses upon the said piece or parcel of land or ground thereby demised, and convenient and suitable offices and outbuildings thereto, in the manner directed or specified in the same covenant, and the brickwork of the same messuages or dwelling-houses is completed up to the first floor or story thereof respectively; AND WHEREAS the said [*mortgagor*], considering it probable that he may have occasion to borrow money in order to complete the erection of the said messuages, or dwelling-houses and buildings, hath applied to the said [*mortgagee*] to make him advances of money from time to time, as he may need and request the same; and the said [*mortgagee*] hath agreed (*a*) to make such advances to the said [*mortgagor*], to the extent of pounds, upon having the same advances, with interest thereon respectively after the rate of 5*l.* for 100*l.* by the year, to be computed from the several days or times on which the same shall respectively be advanced, secured by an assignment of the said piece or parcel of land or ground and premises, comprised in and demised by the said hereinbefore-recited indenture of lease as aforesaid, and their appurtenances, and all erections and buildings now standing and being, or hereafter to be made thereon, unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts and subject to the powers and provisos hereinafter declared and contained, of and concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the premises and of the sum of 10*s.*, of, &c., HE, the said [*mortgagor*], at the request and with

(*a*) Sometimes the mortgagee is made, by the first witnessing part, to *covenant* to advance the money proposed to be lent to the mortgagor in certain proportions, at fixed times or at specified periods, according as the buildings are proceeded with; but such a covenant is generally objected to by a mortgagee.

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

the privity and approbation of the said [*mortgagee*] (testified by his executing these presents), *Hath* granted, bargained, sold, assigned, transferred, and set over, *And* by these presents *Doth* grant, bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT and those, the said piece or parcel of land or ground and premises hereinbefore described, and so comprised in and demised by the said hereinbefore-recited indenture of lease as aforesaid, and their appurtenances; *And* also all those the said six messuages and dwelling-houses, offices, outbuildings, and other erections, which are now partly erected upon the same piece or parcel of land, or ground and premises, as aforesaid, together with all erections and buildings which may hereafter be erected and built, or set up in or upon the same premises, or any part thereof; *And* all the estate, &c.; TO HAVE AND TO HOLD the said piece or parcel of land or ground, messuages or dwelling-houses, erections, buildings, and all and singular other the premises hereby assigned, or intended so to be, and their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from henceforth, for and during all the residue and remainder which is now to come and unexpired of the said term of eighty-one years, created by the said hereinbefore-recited indenture of lease, as aforesaid, at, under, and subject to the rents, covenants, conditions, and agreements in and by the same indenture respectively reserved and contained, on the lessee's or assignee's part to be paid, observed, and performed; *And*, also, under and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and contained of and concerning the same; PROVIDED ALWAYS, and it is hereby covenanted, declared, and agreed, by and between the said parties to these presents, *That* if the said [*mortgagor*], his executors, administrators, or assigns, or any of them, shall and do, on the day of , which will be in the year 183 , well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, *All* such sums or sum of money as he, the said

the land and premises comprised in the lease,

and the messuages and buildings partly erected thereon.

*Habendum* to the trustees for the remainder of the term, at the rent and subject to the covenants in the lease, and to the proviso for redemption aftercontained.

Proviso for redemption.

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

[*mortgagee*], his executors or administrators, (*b*) shall, previously to the same day, have advanced and lent to the said [*mortgagor*], his executors or administrators, and a receipt or receipts for which, under his or their hand or hands, (*c*) shall be indorsed on these presents; *And* shall and do in the meantime pay interest for the same sums respectively, after the rate of 5*l.* for every 100*l.* by the year, to be computed from the day of the advance of the same sums respectively, or the last payment of the interest on the same respectively (according as the case may happen), by equal half-yearly portions, on the day of , and the day of , in each year, without any deduction or abatement out of the same, for or in respect of any matter, cause, or thing whatsoever; *And*, also, do and shall in the meantime pay, observe, and perform the rents, covenants, and agreements in the said recited indenture of lease respectively reserved and contained, on the lessee's part to be paid, observed, and performed, as the said rent shall become payable, and the said covenants and agreements shall be to be observed and performed; *Then*, and in such case, and at any time thereafter, the said [*trustees*], or the survivor of them, his executors, administrators, and assigns, shall and will, at the request and costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, re-assign the said piece or parcel of land or ground, messuages or dwelling-houses, erections, buildings, and premises hereby assigned, or intended so to be, and their appurtenances,

---

As to securities for running accounts extending to loans by executors of a mortgagor.

(*b*) It is generally best to confine the security to loans from the mortgagor to the mortgagee, and not to extend it to loans from the executors or administrators of the former to those of the latter; though a security for such loans between representatives appears to stand, in regard to stamp duty, on the same footing as securities for running accounts to bankers, where the firm is or may be changed. See *ante*, p. 482.

(*c*) A provision of this kind is important, as tending to prevent disputes in reference to the amount of the monies secured or owing. Trustees often feel a difficulty on this head in case a sale is necessary, and the mortgagor will not concur, or cannot be found.

unto the said [*mortgagor*], his executors, administrators, and assigns, or as he or they shall in that behalf order or direct, for all the then residue and remainder of the said term of eighty-one years therein, free from all incumbrances whatever, made, done, or committed by the said [*trustees*], or either of them, or their or either of their executors, administrators, or assigns, so as for the doing thereof they, the said [*trustees*], &c. (*see ante*, p. 373); AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his executors, administrators, or assigns, shall and will pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, all such sums or sum of money as he, the said [*mortgagee*], his executors or administrators, shall or may hereafter advance or pay to him, the said [*mortgagor*], his executors or administrators, on the security of these presents, and for which a receipt or receipts shall be indorsed hereon, as aforesaid, together with interest for the same, after the rate, and to be computed from the time or times hereinbefore mentioned, on or at the days or times and in manner hereinbefore mentioned and appointed for the payment thereof, respectively, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents; AND the said [*mortgagor*] doth hereby, for himself, his executors, and administrators, COVENANT, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, by these presents, in manner following (that is to say), that for and notwithstanding any act, deed, matter, or thing whatsoever, by him, the said [*mortgagor*], made, done, omitted, committed, executed, or knowingly or willingly suffered to the contrary, the said hereinbefore recited indenture of lease is, at the time of the sealing and delivery of these presents, a good, valid, and effectual lease and demise in the law, and not forfeited, surrendered, assigned, or become void or voidable; *And* that the rent, covenants, conditions, and agreements, in and by the same indenture respectively reserved and contained on the tenant's or les-

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

Covenants for payment of principal and interest;

that the said recited lease is valid;

that the rent and covenants then reserved and contained have been paid

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

see's part, to be paid, observed, and performed, have been duly paid, observed, and performed, up to the day of ; *And* that he, the said [*mortgagor*], his executors or administrators, shall and will, from time to time, and at all times hereafter, during the continuance of this security, pay, observe, and perform, or cause to be paid, observed, and performed, the rent, covenants, conditions, and agreements, in and by the same indenture respectively reserved and contained, on the tenant's, lessee's, or assignee's part, to be paid, observed, and performed, as and when the same respectively ought to be paid, observed, and performed, and shall and will, from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified, the said [*trustees*], and each of them, and their and each of their heirs, executors, and administrators, and their and every of their lands and tenements, goods and chattels, from and against the payment, observance, and performance of the same rent, covenants, conditions, and agreements, and every or any of them, and from and against all and all manner of actions and suits, or cause and causes of actions and suits, costs, charges, damages, claims, and demands whatsoever, for or on account thereof, or in anywise relating thereto; *And* that he, the said [*mortgagor*], now hath in himself good right, full power, and lawful and absolute authority, to assign and assure the said piece or parcel of land or ground, messuages, or dwelling-houses, erections, buildings, and premises, hereby assigned, or intended so to be, and their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, for and during all the residue and remainder, which is now unexpired, of the said term of eighty-one years, therein in manner aforesaid, and according to the true intent and meaning of these presents; *And* further, that if default shall be made in payment of the said principal monies, and interest hereby secured, or any part thereof, contrary to the aforesaid proviso or agreement for payment of the same, and the true intent and meaning of these presents, it shall and may be lawful to and for the said [*trustees*], their executors, administrators, and assigns, from time to time, and at all times thereafter, during the continuance of the said term of eighty-one

and performed to the pesent time;

for quiet enjoyment, by the trustees, after default;

and that, during the continuance of the security, the mortgagor will pay and perform the same rent and covenants, and indemnify the trustees therefrom;

that the mortgagor has good right to assign the premises for the remainder of the term.

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

years, peaceably and quietly to enter into and upon, and have, hold, occupy, possess, and enjoy, the said piece or parcel of land or ground, messuages, or dwelling-houses, erections, buildings, and premises, hereby assigned, or intended so to be, and their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand, of or by him, the said [*mortgagor*], his executors or administrators, or any other person or persons whomsoever; *And* that free and clear, and freed and clearly and absolutely acquitted, released, exonerated, and for ever discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all, and all manner of former and other estates, titles, troubles, charges, and incumbrances whatsoever; *And further*, that he, the said [*mortgagor*], his executors or administrators, and all, &c. *(covenant for further assurance)*; PROVIDED ALWAYS, *And* it is hereby agreed and declared, between and by the said parties hereto, that, in the mean time, and until default shall be made in payment of the said principal monies and interest hereby secured, or some part thereof, &c. *(the mortgagor may quietly enjoy)*; PROVIDED ALWAYS, *And* it is hereby further agreed, &c., that if default shall be made, &c. *(the trustees may, at the request of the mortgagor, sell and dispose of the premises, &c. as ante*, p. 374); PROVIDED ALWAYS, *And* it is hereby agreed and declared, between and by the said parties hereto, that if the said [*mortgagor*], his executors, administrators, or assigns, shall not, on or before the day of , which will be in the year , (*d*) complete and finish the said messuages or dwelling-houses, and buildings, by the said hereinbefore-recited indenture

for freedom from incumbrances;

and further assurance.

Proviso for quiet enjoyment, by mortgagor, until default.

Power of sale.

Proviso enabling the mortgagee, his executors, or administrators

(*d*) The time here mentioned should be a few months before the period fixed on in the lease for the completion of the buildings, so as to admit of the buildings being finished by the mortgagee within the time limited in the lease, in case it should be necessary for him to act under this proviso.

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

of lease, covenanted to be erected and built, as hereinbefore is mentioned, it shall be lawful to and for the said [*mortgagee*], his executors, administrators, or assigns, to enter into and upon the said piece or parcel of land or ground, messuages, or dwelling-houses, buildings, and premises, hereby assigned, or intended so to be, or any of them, or any part thereof, and to complete and finish the said messuages or dwelling-houses and buildings according to the true intent and meaning of the covenant in the said indenture of lease in that behalf contained; *And* for that purpose to engage and employ such bricklayers, masons, carpenters, glaziers, builders, surveyors, and other persons, as he or they shall think proper, and that all sums of money which he or they shall pay and expend, in completing and finishing the said messuages or dwelling-houses and buildings, in manner aforesaid, and for which a receipt or receipts shall be given by the person or persons to whom the same shall be paid, shall be deemed and considered as part of the principal monies secured, or intended to be secured, by these presents, and shall bear or carry interest, after the rate of 5*l.* for 100*l.* by the year, from the time, or respective times, of advancing and paying the same. PROVIDED ALWAYS, *And* it is hereby agreed and declared, between and by the parties hereto, that it shall be lawful for the said [*trustees*] and the survivor of them, and their or his executors, administrators, or assigns, at the request in writing of the said [*mortgagor*], his executors, administrators, or assigns, to lease and demise the said messuages or dwelling-houses, buildings, and premises, hereby assigned, or intended so to be, or any of them, to any person or persons, for any term or number of years not exceeding twenty-one years, to be computed from the making thereof, so that there be reserved, in every such lease or demise, the best yearly rent that can be reasonably obtained for the same, &c. &c. (*see Powers of Leasing, ante*, p. 376, 377) (*e*). PROVIDED

to complete the buildings, if the mortgagor should neglect to do so within a given time.

Power of leasing.

Insurance and trustee clauses.

(*e*) The power of leasing should be varied according to circumstances. Sometimes it will be necessary to authorize the granting of a lease for

OF A BUILDING LEASE FOR SECURING ALL SUMS TO BE ADVANCED FOR BUILDINGS.

ALWAYS, *And*, &c. (*Provisions for keeping the premises insured against damage by fire, for changing and appointing new trustees, and for the indemnity of the trustees, as ante*, p. 320, 491.) PROVIDED ALWAYS, *And* it is hereby lastly agreed and declared, between and by the said parties hereto, that the total amount of the principal monies secured by, and to be ultimately recoverable upon or by virtue of these presents, including all monies to be paid or expended for completing buildings as aforesaid, but excluding the premiums, costs, and expenses, which may be advanced or incurred for insurance, as hereinbefore is mentioned, shall not exceed the sum of pounds. IN WITNESS, &c.

Clause, limiting the amount of the principal secured.

---

nearly the whole of the term at a premium; in which case the premium should be made payable to the mortgagee, in part discharge of the principal money secured, and the mortgagee should be obliged to accept it, although the time for the payment has not arrived.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

## MORTGAGE *in* FEE *by* TENANT *in* TAIL *in Possession, for securing the Amount of his* SOLICITOR'S BILL, *and a Sum of Money advanced at the Time of executing the Deed, with Interest. (Part of the Premises being derived under an* INCLOSURE ACT, *and all of them being described in a* PLAN. (*a*)

Parties.

THIS INDENTURE, made the day of , 182 ; BETWEEN [*mortgagor*], of, &c., and [ ] his wife, of the first part; [*mortgagee*], of, &c., of the second

---

Mortgages by tenants in tail.

(*a*) It is not very common for a mortgage to be made by the same deed by which the tenant in tail makes the tenant to the *præcipe*, for the purpose of suffering the common recovery, and declares the uses of the recovery, as the mortgagee cannot be advised to advance his money before the recovery is completed, lest the tenant in tail should happen to die in the meantime. The better, and only safe course, is for the tenant in tail first to suffer the recovery and have the estate limited to him in fee, or, if he be married, to the usual uses, to prevent his wife becoming entitled to dower; and then, by a separate deed, to make the proposed security. In this deed it will generally be sufficient merely to recite the recovery-deed, and recovery suffered in pursuance of it.

When the sum to be secured is a *debt*, or has been already advanced on a bond, note, or other different security, there is of course no necessity for this caution, and the security may, therefore, be properly made by the deed by which the tenant to the *præcipe* for suffering the recovery is made. If the money proposed to be lent is lying idle, and the mortgagee requires that interest should commence from the time of executing the recovery-deed, the security may also be made by that deed; but the money should, in such case, be paid into a bank, or invested in the funds or other convertible security, at the risk of the mortgagor, in the names of third parties, to be paid to the mortgagor when the recovery has been perfected, or, in the event of his death before it is perfected, to be repaid to the mortgagee.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

part; [*tenant to the præcipe*], of, &c., of the third part; [*demandant in the recovery*], of, &c., of the fourth part; and [*one trustee*], of, &c., and [*other trustee*], of, &c., of the fifth part; WHEREAS [A. B.], formerly of, &c. but now deceased, was, at the time of making his will hereinafter recited, and from thenceforth to the time of his decease, seised or entitled, in fee simple in possession, of or to the messuage or tenement and outbuildings hereinafter described, which are hereinafter mentioned to be situate at , and to be distinguished in the map or plan drawn in the margin of these presents, by the Nos. 1 and 2; and, also, of or to the four closes or pieces or parcels of land or ground hereinafter described, which are hereinafter mentioned to be situate at , and to be distinguished in the said map or plan by the Nos. 3, 4, 5, and 6; and, also, of or to divers other closes or pieces or parcels of land or ground, situate at , &c., some of which said last-mentioned closes or pieces or parcels of land or ground were lying dispersedly in the open or common fields of aforesaid, *Together* with rights of common and other appurtenances to the same several closes belonging or appertaining; AND WHEREAS the said [A. B.], being so seised or entitled, as aforesaid, did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament in writing, bearing date on or about the day of , *And* thereby (after bequeathing to the several persons therein named the several legacies therein mentioned), gave, devised, and bequeathed all the residue and remainder of his estate, both real and personal, unto his nephew, [C. D.], his heirs and assigns, for ever; *And* the said testator appointed the said [C. D.] sole executor of his said will; AND WHEREAS the said, &c. [*death of A. B. and probate of his will*]; AND WHEREAS the said [C. D.] departed this life on or about the day of , intestate; *And* thereupon the said messuage or tenement, closes, &c., which were so given and devised to him by the said recited will of the said [A. B.], as aforesaid, descended to and became vested in [E. F.] and [G. H.], his two sisters and coheiresses at law; AND WHEREAS, some time in or about

Recites that A. B., at the time of making his will, was seised of the premises after described which in the plan are numbered 1, 2, 3, 4, 5, and 6.

The will of A. B., whereby he gave the residue of his estate, real and personal, to his nephew, C. D.,

and appointed him sole executor.

Death of A. B. and probate of his will.

Death of the nephew intestate, whereupon the estates descended to his two sisters, E. F. and G. H.

The marriage of E. F. with X. Y.;

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

the year , the said [E. F.] intermarried with and became the wife of [X. Y.], then of, &c., but now deceased, by whom she had one child, named [E. Y.]; AND WHEREAS the said [E. F.], the wife of the said [X. Y.], departed this life on or about the day of , and, upon her decease, her moiety or half part or share of and in the said messuage or tenement, closes, &c., which so descended to and became vested in her and the said [G. H.], as aforesaid, and their appurtenances, descended to and became vested in the said [E. Y.], as her heiress at law, *But* subject to the estate for life therein of the said [X. Y.], as tenant by the courtesy of England; AND WHEREAS the said [G. H.], in such manner as the law requires for rendering valid devises of freehold estates, duly signed and published her last will and testament in writing, bearing date on or about the day of , and thereby gave and devised all and every her messuages, &c., and parts and shares of messuages, &c., situate, &c. (meaning thereby her moiety or half-part or share of and in the said messuage or tenement, closes, &c., which so descended to and became vested in her and the said [E. F.], as aforesaid, and their appurtenances), unto her niece, the said [E. Y.], during her life, and after her decease, *To the use* of [N. O.] and [P. Q.], therein respectively described, and their heirs, during the life of the said [E. Y.], *In trust* to support the contingent uses or estates thereinafter limited, from being defeated or destroyed, with remainder to the use of the first and every other son of the said [E. Y.], severally and successively in tail, with divers remainders over, and the said testatrix appointed [ ] and [ ] joint executors of her said will; AND WHEREAS the said [G. H.] departed this life, &c. (*recites her death and probate of her will*); AND WHEREAS the said [X. Y.] departed this life on or about the day of ; AND WHEREAS the said [X. Y.] was, at the time of his decease, and for many years previously thereto, seised or entitled in fee simple in possession of or to the closes, or pieces or parcels of land or ground hereinafter described, which are hereinafter mentioned to be situate at , and to be distinguished in the said map or plan by the Nos. 17, 18, and 19, and also of

her death, and that her moiety of the estates then descended to her daughter, E. Y., subject to the life estate of X. Y., as tenant by the curtesy.

The will of G. H., whereby she gave her moiety to her said niece, E. Y., for her life;

with remainder to trustees, to preserve the contingent uses after limited, with remainder to her niece's first and other sons, in tail;

death of E. F. and probate of her will;

death of X. Y.; that at the time of his decease he was seised in fee of the premises after described, which in the plan are numbered 17, 18, and 19;

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

or to several closes, or pieces or parcels of land or ground, lying dispersedly in the open and common field lands of , aforesaid; AND WHEREAS, the said [X. Y.] having died intestate, the said closes or pieces or parcels of land or ground, of or to which he was so seised or entitled as aforesaid, descended, after his decease, to the said [E. Y.], as his heiress at law; AND WHEREAS, by an award in writing of the commissioners named in and appointed by a certain act of Parliament, passed in the forty-sixth year of the reign of his Majesty King George the Third, intituled "An Act for inclosing Lands in the Parish of , in the County of ," bearing date the day of , 1807, the closes, or pieces or parcels of land or ground, hereinafter described, which are hereinafter mentioned to be situate at , and to be distinguished in the said map or plan by the Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, and 21, and their appurtenances, were allotted and awarded unto the said [E. Y.], in lieu and full satisfaction of all her lands and rights of common in or upon the lands and ground intended and directed by the said act to be inclosed; *And* by the said act it was enacted, that the respective persons to whom any lands or hereditaments should be allotted or given in exchange by virtue of the said act, should be seised thereof to such and the same uses, and for such and the same estates and interests, and subject to such and the same incumbrances, as the lands and hereditaments in respect whereof such allotments or exchanges should be made would have been subject to, charged with, or affected by, in case the said act had not been made; AND WHEREAS the said [E. Y.] did, on or about the day of , intermarry with the Rev. [T. J.], rector of , in the county of ; AND WHEREAS the said [E. Y.] departed this life on or about the day of , leaving the said [T. J.], her husband and the said [*mortgagor*], her only son and heir, her surviving; AND WHEREAS the said [T. J.] departed this life on or about the day of , 182 ; AND WHEREAS the said [*mortgagor*] attained his age of twenty-one years in or about the month of , 1827; AND WHEREAS the said allotments, or pieces or parcels of

that he died intestate, and the same then descended to his daughter, E. Y.;

the award of the commissioners appointed by an act of Parliament, whereby the premises, which in the plan are numbered 7 to 16, and 20 and 21, were allotted to E. Y., in lieu of her lands in the open fields, and of her rights of common;

that by the said act it was enacted, that the persons to whom lands should be allotted, should be seised thereof to the same uses and subject to the same incumbrances as the lands taken were limited or subject to.

The marriage of E. Y.;

her death, leaving the mortgagor her only son;

the death of E. Y.'s husband;

that her son attained twenty-one on the day of ;

that the allotments made un-

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

land or ground, which were so allotted and awarded under the said act of parliament to the said [E. Y.], as hereinbefore is mentioned, having been allotted to her, in respect, as well of the lands and hereditaments which were devised by the hereinbefore-recited will of the said [G. H.] as aforesaid, as of the lands and hereditaments which descended to her on the respective deceases of the said [X. Y.], and [ ], his wife, as hereinbefore is mentioned, it is conceived that the said allotments, or pieces or parcels of land or ground, are subject to the estate tail created by the said will of the said [G. H.], as aforesaid; AND WHEREAS the said [*mortgagor*] is desirous, that such of the said messuages or tenements, closes, pieces or parcels of land or ground, hereditaments, and premises, hereinafter particularly mentioned and described, as were given and devised by the said will of the said [G. H.], as aforesaid, or are, by virtue of the said hereinbefore-mentioned act and award, now subject to the uses of the same will, and their appurtenances, should be discharged from the said estate tail of the said [*mortgagor*], therein, under or by virtue of the said will, and all remainders, reversions, and limitations, thereupon expectant or depending, *And* that all the said messuages or tenements, closes, pieces, or parcels of land or ground, hereditaments, and premises, and their appurtenances, should be released and discharged from all right and title of dower, and other estates, rights, and interests whatever (if any), which the said [ ], the wife of the said [*mortgagor*], now hath, or can or may have, in or to the same hereditaments and premises, or any part thereof; AND WHEREAS the said [*mortgagee*] hath, for some time past, been engaged or employed by and for the said [*mortgagor*], as his attorney, agent, and solicitor, in divers actions at law and suits in equity, and in completing several purchases, and preparing the necessary conveyances and assurances, and in transacting a variety of other matters of business relating to the affairs and concerns of the said [*mortgagor*]; *And*, in the course of conducting and transacting such business as aforesaid, he hath laid out and expended for and on account of the said [*mortgagor*] considerable sums of money; AND WHEREAS the said [*mortgagee*] hath lately made

der the inclosure are subject to the estate tail, created by the will of G. H.;

that the mortgagor is desirous that the premises should be discharged from the estate-tail, and all remainders, &c., and from all dower of the wife of the mortgagor therein;

that the mortgagee has been employed as solicitor for the mortgagor;

that there is due to him, for costs, &c. the sum of *l.*

and rendered to the said [*mortgagor*] an account of his costs and charges, in relation to the several actions, suits, conveyances, and other business and transactions, in which he has been engaged or employed for him, the said [*mortgagor*], as aforesaid, and of the sums of money which he hath laid out and expended on his account, as hereinbefore is mentioned, which costs, charges, (*b*) and sums of

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

(*b*) An attorney or solicitor may take a security for costs already incurred, but not for future costs; and if the security is prepared, so as to extend to future costs, it will be confined to such costs only as are presently due. It was formerly considered that a security to a solicitor for *future* costs was not open to objection, as the law-charges are, notwithstanding the security, liable to taxation, *Walmsley* v. *Booth*, 2 Atk. 29; *Saunderson* v. *Glass*, 2 Atk. 298; *Newman* v. *Payne*, 4 B. C. C. 350; *Morgan* v. *Lewes*, 4 Dow. 29; but the contrary doctrine has been established in more recent cases.

As to securities to solicitors for costs.

In *Jones* v. *Tripp*, Jacob, p. 323, the Lord Chancellor (*Eldon*) said, "The court will not permit an attorney to take from his client a mortgage for costs to be incurred; the inducement for Lewis to execute the deed was, that *Tripp* should proceed in his business for him, but such a security cannot be allowed. The deed on the face of it is not supportable; so clearly so, that I cannot permit the question to be argued." In *Williams and others* v. *Pigott*, Jacob, 598, the defendant, by an indenture bearing date the 18th of February, 1819, after reciting, that she had employed the plaintiffs as her attorneys, in the defence of certain actions and indictments, and other business, and that a considerable sum was due from her to them, for managing and conducting the said defence and business, and that the management thereof would be attended with future expense, and that they had applied to her to give them some security for such past and future expenses, if the same should not exceed 500*l.*, did assign and covenant to surrender to one of the plaintiffs a copyhold estate, with a proviso for redemption, in case of her paying, on the 18th of February, 1820, all such sums as should be due from her to the plaintiffs, for or by reason of the conduct of the said defence and business, or in anywise relating thereto, or to any other matter, if the same should not exceed 500*l.*, or if the same should exceed 500*l.* then upon payment of that sum. The plaintiffs acted as the defendant's attorneys for several months after the date of the deed. They then filed a bill, praying an account of the costs due to them, and that the defendant might pay the amount, or that the mortgage might be foreclosed. On the hearing of the cause, Sir *T. Plumer*, M. R., said, "I do not propose, at present, to go fully into the question which this case gives rise to, but only to put it into a train, that may perhaps lead the parties to settle what is in

*Jones* v. *Tripp*.

*Williams* v. *Pigott*.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

money, amount together to the sum of pounds, and include and comprise all claims and demands which the said [*mortgagee*] hath against or upon him, the said [*mortgagor*], up to and inclusive of the 31st day of December now last past, but do not include or comprise any of the costs, charges, and sums of money, which have been incurred or expended on account of the said [*mortgagor*], since the said 31st day of December now last past; AND WHEREAS the said [*mortgagee*] hath this day advanced and lent to the said [*mortgagor*] the sum of 200*l.*, as he,

that mortgagee has this day lent to mortgagor the sum of 200*l.*

---

difference between them. I shall direct an account of what was due from the defendant to the plaintiffs, at the date of the security, in order to ascertain the sum which in any event they will be entitled to; for I apprehend it cannot be argued that a security may not be taken from a client for what is due from him at the time. The question has been, whether a solicitor can, *ab ante*, take a security for future costs; and even the opinion which is strongest on the point, that of the Lord Chancellor, admits, that it may be good for what is due at the time. The object of the bill is to enforce a mortgage of a copyhold estate, and the security being admitted, and also the fact that there had been advances, and that there was a debt due at the time, the consequence follows, that the plaintiffs are entitled to relief to that extent, unless there be any rule of the court prohibiting such a security between persons in the relative situations of solicitor and client. It is not pretended that there was any fraud. If there be any objection, it arises from the relation in which they stood. To the extent of protecting the client from any misconduct on the part of his solicitor, and of preventing anything being done which a disinterested solicitor would not advise, the practice of the court may reasonably go; but, supposing that there is no fraud or imposition, and no doubt of the debt being due, or of the fairness of the transaction, if it is not attempted to preclude the taxation of the bill, to say, that in such a case the security is void, appears to me to go beyond any principle or authority. It it were established that the security is bad as to the future costs, it would not follow that it must also be bad as to the other part, for it is not made void by statute. If the court considers it bad, it is only in the exercise of its discretion in regulating the conduct of solicitors; the court would therefore only invalidate it *pro tanto*, allowing it to stand as a security for the amount due at the time. I do not see any objection to giving the plaintiffs the benefit of the security, so far as I have mentioned, not deciding, at present, the question whether they are entitled to anything beyond it in respect of subsequent costs. I cannot, however, conceal that the Lord Chancellor has intimated

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

that the mortgagee has agreed to allow a year for payment for those sums, on having them secured, with interest, by a mortgage of the messuage, &c. after described.

the said [*mortgagor*], doth hereby admit and acknowledge; AND WHEREAS the said [*mortgagee*] hath agreed, at the request of the said [*mortgagor*], to forbear requiring payment of the said sum of pounds, so due and owing to him, from the said [*mortgagor*], in respect of professional business transacted on his account, as aforesaid, and of the said sum of 200*l.* this day advanced and lent by him to the said [*mortgagor*], as hereinbefore is mentioned, for the period of one year, upon having the repayment of the same sums (making together the sum of

---

a strong opinion upon that point, considering that a security for future costs cannot be taken. Whatever my own opinion on that question may be, if I presumed to entertain a doubt on what he has expressed so strongly, I should not act upon it, as it would be immediately set right upon appeal."

The decree referred it to the master to take an account of the sums advanced, and of the fees, &c. for business, done up to the 18th of February, 1819; reserving the consideration of the question, whether the security was valid as a security for the business done subsequently to the 18th of February, 1819. The decree was pronounced on the 7th of August, 1820. In July, 1825, the cause came on to be heard, on further directions, before Lord *Gifford*, the then Master of the Rolls, and he refused to decree an account for costs subsequent to the date of the mortgage.

As to the effect, the taking of security for costs has on the general lien of solicitors on deeds and papers.

In preparing securities for costs to solicitors, it is very important to consider the effect which the taking of such security may have on the general lien of solicitors, on the deeds and papers of their clients in their possession. Where a firm accepted bills at three years' date, for their costs, Lord *Eldon* was of opinion, that the lien was impliedly abandoned, and if a bond or mortgage be given for the costs, it seems very doubtful whether the lien will not be lost, unless there be a special provision to the contrary, the lien constituting merely a debt by simple contract, which is generally destroyed by the acceptance of a security of a higher nature. *Stevenson* v. *Blakelock*, 1 Maul. & Selw. 535; and *Cowell* v. *Simpson*, 16 Ves. 275.

On the subject of an attorney's or solicitor's lien for costs, see also *Wilkins* v. *Carmichael*, Doug. 104; *Worrall* v. *Johnson*, 2 Jac. and Walk. 214; *Lann* v. *Church*, 4 Madd. 391; *ex parte Bryant*, 2 Rose, 237; *Skinner* v. *Sweet*, 3 Madd. 244; *Hollis* v. *Claridge*, 4 Taunt. 807; *Chase* v. *Westmore*, 5 Maule and Selw. 180; *Lord* v. *Wormleighton*, Jacob, 580; *Commerad* v. *Poynton*, 1 Swans. 1; and *Creswell* v. *Byron*, 14 Ves. 271.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

pounds), with interest thereon, after the rate, &c. to be computed from the day of the date of these presents, secured by a mortgage, in manner hereinafter mentioned, of the said messuages or tenements, closes, pieces or parcels of land or ground, hereditaments, and premises, hereinafter particularly mentioned and described, and their appurtenances, with such power of sale as is hereinafter contained; AND WHEREAS the said [*trustees*] have consented and agreed to become trustees of the said intended mortgage security, as they do hereby testify and declare;

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the agreement, and for carrying the desires and purposes aforesaid into effect, and in consideration of the premises, and of the sum of 10*s.* of lawful money of Great Britain and Ireland, by the said [*tenant to the præcipe*] to the said [*mortgagor*] paid, at or immediately before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged); HE, the said [*mortgagor*], with the privity and approbation of the said [*mortgagee*] (testified by his being a party to, and sealing and delivering these presents), *Hath* granted, bargained, sold, and released, *And* by these presents *Doth* grant, bargain, sell, and release, unto the said [*tenant to the præcipe*], in his actual possession now being, &c. *(reference to lease for a year)*, and his heirs, ALL THAT messuage or tenement, or dwelling-house, with the yard, garden, outbuildings, and appurtenances thereunto belonging, situate and being at aforesaid, formerly in the occupation of , afterwards of , but now of (being the same messuage or tenement and premises, which in the said map or plan are distinguished by the Nos. 1 and 2); *And also* all those four several closes or pieces, or parcels of land or ground, situate and being at aforesaid, called or known by the several names, and containing, by estimation, the several quantities hereinafter mentioned (that is to say), the home close, containing acres, roods, poles; the paddock, containing acres, roods, poles; the upper close, containing acres, roods, poles; and the little close, containing acres, roods, poles (being the same closes, or pieces or par-

The mortgagor, in consideration of the premises, and of 10*s.*, conveys to the tenant to the *præcipe* and his heirs.

Parcels.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

cels of land or ground, which in the said map or plan are distinguished by the Nos. 3, 4, 5, and 6); *And also* all those ten several allotments, or pieces or parcels of land or ground, situate and being at aforesaid, lying together, containing, in the whole, acres, roods, poles, which were formerly part of the open and common field of , and which, by virtue of the hereinbefore mentioned act and award, were allotted to the said [E. Y.], as hereinbefore is mentioned and recited (being the same pieces or parcels of land or ground, which in the said map or plan are distinguished by the Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16); *And also* all that messuage or tenement, with the barn, stable, and appurtenances thereunto belonging, situate and being at aforesaid, &c. *(describing the remainder of the parcels in like manner, as above)*; Together with all, &c. *(general words)*; *And* the reversion, &c.; *And* all the estate, &c.; TO HAVE AND TO HOLD the said messuages or tenements, closes, pieces or parcels of land or ground, hereditaments, and premises, hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*tenant to the præcipe*], and his heirs, *To the use* of him the said [*tenant to the præcipe*], and his heirs; *To the intent* that he, the said [*tenant to the præcipe*], may be the immediate tenant of the actual freehold of the said messuages, &c. (*common form for suffering a common recovery*, (c) *the wife joining therein*). AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that, immediately upon and after judgment obtained, and seisin had and taken upon such recovery or recoveries as aforesaid, the said recovery or recoveries, and all other recoveries, conveyances, and assurances whatsoever, of the said messuages, &c. hereby, &c. or any part thereof, shall (so far as the same respectively comprise or affect the same messuages, &c. or any of them, and so far as the said parties to these presents can lawfully or rightfully direct the uses thereof) operate and enure, *To the use* of the said [*trus-*

*Habendum* in fee, for the purpose of suffering a common recovery.

Declaration, that the recoveries, &c. shall operate and enure to the use of the trustees for the mortgagee, but subject to the provisoes after contained.

(c) See title RECOVERIES, in the seventh volume.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

*tees*], their heirs and assigns, for ever, ***In trust*** for the said [*mortgagee*], his heirs, executors, administrators, and assigns; ***But***, nevertheless, under and subject to the provisoes, agreements, and declarations hereinafter mentioned.

Proviso for redemption.

PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, &c. (***that if mortgagor should pay to mortgagee*** the sum of pounds, of lawful money of Great Britain and Ireland (being the amount of the two general sums of pounds and pounds, respectively due and owing to, and advanced by the said [*mortgagor*], as hereinbefore is mentioned), together with interest, &c. ***Then the trustees, their heirs or assigns, should convey the premises to the mortgagor in fee,*** as ***ante,*** p. 281-2);

Covenant for payment.

AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, &c. (***covenant for payment of the principal sum and interest, as mentioned in the proviso,*** as ***ante,*** p. 283); (*d*) AND the said [*mort-*

---

(*d*) The following form is sometimes used:—

Covenant to pay principal and interest at the time appointed, and, in default thereof, to pay all costs occasioned by non-payment.

"***And*** the said [*mortgagor*] ***Doth*** hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, and assigns, the said sum of pounds, and interest for the same, after the rate, on the day and time, and in manner hereinbefore mentioned for payment thereof, according to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, and of these presents; ***And*** in case default shall happen to be made in payment of the said sum and interest, on the day and time hereinbefore limited and appointed for payment thereof, ***Then*** that the said [*mortgagor*], his heirs, executors, and administrators, also shall and will, within ten days after, on demand, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, and assigns, all

*gagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*tenant to the præcipe*], and his heirs, and also with and to the said [*trustees*], their heirs and assigns, in manner following (that is to say), that he, the said [*mortgagor*], &c. (*hath good right to convey, that the mortgagee may enter and enjoy after default, free from incumbrances, and for further assurance,* as *ante,* p. 283-5); PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that until default shall be made in the payment of the said principal monies and interest hereby secured, or some part thereof, contrary, &c. (*Proviso for quiet enjoyment by mortgagor, until default,* as *ante,* p. 286); PROVIDED ALWAYS, and it is hereby expressly agreed and declared, &c. (*Power of sale, with provisions for making the trustee's receipts sufficient discharges, and for changing and appointing new trustees, and for indemnifying the trustees,* as *ante,* p. 309, 319). IN WITNESS, &c.

BY TENANT IN TAIL FOR SECURING A SOLICITOR'S BILL, &c.

Covenant for title.

Proviso for quiet enjoyment, by the mortgagor, until default.

Powers of sale, and for changing trustees.

---

costs, charges, damages, and expenses, which he, the said [*mortgagee*], his executors or administrators, shall or may pay, incur, sustain, or become liable to, in the execution of the powers and trusts hereby reposed in him and them, and in enforcing payment of the money, and interest hereby secured, or of money to be raised under the said sale or sales, or otherwise, in relation to the powers and trusts hereinbefore contained, together with interest* for the same, costs, charges, damages, and expenses, after the rate aforesaid, according to the true intent and meaning of these presents."

---

* It may be open to doubt, whether, if interest is payable on the expenses, the amount of the expenses ought not to be limited, to prevent the mortgage from being liable to an *ad valorem* duty for an indefinite sum, see 55 Geo. III. c. 184, sched. Part I. MORTGAGE.

BOND TO ACCOMPANY A MORTGAGE.

### Bond *to accompany a* Mortgage. (*a*)

KNOW ALL MEN, BY THESE PRESENTS, that I, [*mortgagor*], of, &c., am held and firmly bound to [*mortgagee*], of, &c., in the sum of pounds, &c. (as in Vol. IV. p. 321):

Condition of a mortgage-bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the above-bounden [*mortgagor*], his heirs, executors, or administrators, shall and do, on the day of now next ensuing, (*b*) well and truly pay, or cause to be paid, unto the above-named [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, together with interest for the same after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of the above-written bond or obligation, without any deduction or abatement whatsoever (being the same sum and interest as are mentioned, and intended to be secured, by a certain indenture of release and mortgage bearing even date with the above-written bond or obligation, and made, or mentioned to be made, between the said [*mortgagor*], of the one part, and the said [*mortgagee*] of the other part, and grounded on a lease for a year therein mentioned or referred to), (*c*) ***Then***, and in such case, the above-written bond or obligation shall be void; otherwise the same shall remain in full force and virtue.

Sealed and delivered, &c. [*Mortgagor.*]

---

(*a*) A bond to accompany a mortgage is less frequent in practice than formerly, as, by many, it is considered an unnecessary expense. If, as is usual, it bears *even date* with the mortgage-deed, it is only liable to a 1*l.* stamp. See 55 Geo. III. c. 184, Sched. Part I. *Bond.* As to other bonds, see title "BONDS," and Index, BONDS.

(*b*) The times of payment in the condition should, of course, be made to agree with the terms of the proviso for redemption in the mortgage-deed.

(*c*) Sometimes the condition extends also to the performance of covenants in the mortgage. In such case, add,—

"***And*** shall and do well and truly observe and perform," &c. nearly as in Vol. IV. pp. 328—330.

WARRANT *of* ATTORNEY *to accompany a* MORTGAGE. (*a*)

WARRANT OF ATTORNEY TO SECURE A SUM LENT ON MORTGAGE.

TO [X. Y.] and [Y. Z.], Gentlemen, Attornies of his majesty's Court of Common Pleas at Westminster, jointly and severally, or to any other Attorney of the same Court:

THESE are to authorize and empower you, the attornies above named, and each or either of you, or any other attorney of the said Court of Common Pleas, to appear for me, [*mortgagor*], of, &c., in the said court, in or as of this present Easter Term, or in or as of Trinity Term next, or any subsequent term, and then and there to receive a declaration for me in an action of debt against me for the sum of pounds, (*b*) for money borrowed at the suit of [*mortgagee*], of, &c., his executors or administrators, *And* thereupon to confess the same action, or else to suffer a judgment by *nil dicit*, or otherwise, to pass against me in the same action, and to be forthwith entered up against me of record in the same court, for the said sum of pounds, together with costs of suit; AND THESE are further to authorize and empower you, my said attornies, or any of you, after the said judgment shall be entered up, as aforesaid, in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said [*mortgagee*], his executors or administrators, of all error and errors, and writ and writs of error, and all benefit and advantage thereof, and all mis-

Common warrant of attorney, to secure a sum of money secured by a mortgage.

(*a*) A warrant of attorney for this purpose is not liable to an *ad valorem* duty, but only to a 1*l.* stamp. In order to show that the warrant of attorney is duly stamped, it is proper to refer in the defeazance to the mortgage-deed, bond, or other collateral security, but in other respects such reference seems not to be necessary. *Sanson* v. *Goode*, 2 B. & A. 568. Stamp.

(*b*) Double the amount of the mortgage-money.

WARRANT OF ATTORNEY TO SECURE A SUM LENT ON MORTGAGE.

prisions of errors, defections, and imperfections whatsoever, which may be committed, or may happen or arise in or about or concerning the said action or judgment, or any writ, warrant, process, declaration, plea, entry, or other proceeding in anywise relating thereto, *And* for what, &c. (as *post*, p. 519; and see Tidd's Appendix, p. 213, 6th Edit.)

DEFEAZANCE TO BE INDORSED.

The defeazance.

*Mortgagor* v. *Mortgagee.* MEMORANDUM that the within warrant of attorney is given for securing the payment by the within-named [*mortgagor*], his heirs, executors, or administrators, to the within-named [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, and interest, on or at the days or times and in manner following (that is to say), the sum of pounds, being the amount of half a year's interest, &c. (*setting out the times of payment in the mortgage-deed, as ante, p.* 281); WHICH said sum and interest are also secured by a certain indenture of assignment and mortgage, bearing even date with the said within warrant of attorney, and made, &c., between [*a prior mortgagee*], of, &c., of the first part; the said [*mortgagor*], of the second part; the said [*mortgagee*], of the third part; and [*trustees*], of the fourth part; whereby certain leasehold premises, therein described and mentioned to be situate, &c., have been assigned to the said [*mortgagee*], his executors, administrators, and assigns, for the residue of a term of 99 years, in the said indenture mentioned or referred to, at the rent and subject to the covenants therein also mentioned or referred to, *And also* subject to a proviso or condition in the same indenture contained for redemption of the said premises, on payment, by the said [*mortgagor*], his heirs, executors, or administrators, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, and interest, on or at the days or times and in manner in the said indenture and this present defeazance mentioned and appointed for payment thereof respectively: AND IT IS AGREED, by the said parties hereto, that no execution shall be issued upon the said judgment to be entered up by

WARRANT OF ATTORNEY TO SECURE A SUM LENT ON MORTGAGE.

virtue of the said within warrant, until default shall have been made in payment of the said sum of pounds, and interest, secured, or intended to be secured, as aforesaid, or some part thereof, on or at the days or times hereinbefore mentioned for the payment thereof; *But* if default shall be made in payment of the said sum and interest, or any part thereof, as aforesaid, *Then* it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, immediately thereupon, to issue, or cause to be issued, execution on the said judgment, for such sum or sums of money as shall be then due for or on account of the same sum and interest, or either of them: AND IT IS FURTHER AGREED, by the said parties hereto, that it shall not be necessary for the said [*mortgagee*], his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, or do any act, matter, or thing for keeping the same on foot, although no proceeding thereon shall have been taken within one year immediately preceding the issuing of such execution; AND IT IS ALSO AGREED, by the said parties hereto, that after the full payment of the said sum of pounds, and interest, secured, or intended to be secured, as aforesaid, and of all costs, charges, and expenses (if any), occasioned by the non-payment of the same, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, at the request and at the costs and charges of the said [*mortgagor*], his heirs, executors, or administrators, acknowledge, or cause to be acknowledged, satisfaction upon the record of the judgment to be entered up, by virtue of the said warrant of attorney, or assign or dispose of the same judgment, and all benefit and advantage to be derived therefrom, unto such person or persons, and in such manner, as the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall order or direct. (*c*) As witness the hands of the said parties, this day of .

[*Mortgagor.*]
[*Mortgagee.*]

(*c*) See, further, as to Warrants of Attorney, title "WARRANT OF ATTORNEY," in the eighth volume.

WARRANT OF ATTORNEY IN EJECTMENT.

### Warrant *of* Attorney *by a* Mortgagor, *to confess a* Judgment, *in an Action of* Ejectment *for the Recovery of the Mortgaged Premises.* (*a*)

Warrant of attorney to confess a judgment in ejectment.

TO [A. B.] and [C. D.], gentlemen, attornies of his majesty's Court of King's Bench at Westminster, jointly and severally, or to any other attorney or attornies of the same Court: These are to authorize and empower you, the attornies above named, and each or either of you, or any other attorney of the said Court of King's Bench, to appear for me, [*mortgagor*], of, &c. in the said court, in or as of this present term, or of term next, or of any other subsequent term, and then and there to receive a declaration for me in an action of trespass and ejectment of farm, at the suit of John Doe, on the demise of [*mortgagee*], of, &c. for messuages, barns, stables, outhouses, yards, gardens, orchards, acres of arable land, acres of meadow, acres of pasture, &c. &c., situate, lying, and being, in the parish of , in the county of , which the said [*mortgagee*] had demised to the said John Doe, for the term of years, from the 29th day of September, 1802, and thereupon to confess the same action, or else to suffer judgment by *nil dicit*, or otherwise, to pass against me in the same action, and to be thereupon forthwith entered up against me of record in the said court, for the recovery of the said term yet to come of and in the said tenements, with the appurtenances, and also for the recovery of pounds, damages, besides costs of suits; *And* I, the said [*mortgagor*], *Do* hereby further authorize and empower you, the attornies, or any

---

(*a*) Warrants of attorney of this kind are seldom given, but they are useful in enabling the mortgagee to recover speedy possession of the premises in mortgage, in case of default. Where the mortgagor is himself in possession, and the security is not very ample, it is prudent to stipulate for such a warrant of attorney.

one of you, or any other attorney, as aforesaid, after the said judgment shall be so entered up, as aforesaid, for me, and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release in the law to the said John Doe and the said [*mortgagee*], or either of them, or their or either of their heirs, executors, administrators, or assigns, of all and all manner of error and errors, writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or any way concerning the same; *And* for what you, the said attornies, or any one of you, shall do, or cause to be done, in the premises, or any of them, this shall be to you, and every or any of you, a sufficient warrant and authority. In witness, &c.

WARRANT OF ATTORNEY IN EJECTMENT.

[*mortgagor.*]

Sealed and delivered (being first duly stamped) in the presence of X. Y.

THE DEFEAZANCE.

Whereas, (*b*) by an indenture of release bearing even

Recital of the mortgage.

(*b*) Sometimes the defeazance is made by indorsement; in which case, the form will run,—

"Memorandum that the within-written warrant of attorney is given to secure the re-payment of the sum of pounds, and interest, from the within-named [*mortgagor*], his heirs, executors, or administrators, to the within-named [*mortgagee*], his executors, administrators, or assigns, collaterally with a certain indenture of mortgage of the within-mentioned messuages, lands, and premises, bearing even date with these presents, and made, or expressed to be made, &c. &c.; *And* that it is hereby declared and agreed, between and by the said parties hereto, that no execution shall be taken out," &c. See p. 520.

Defeazance by indorsement.

WARRANT OF ATTORNEY IN EJECTMENT.

date with the above-written warrant of attorney, and made, or expressed to be made, between the said [*mortgagor*], of the one part; and the said [*mortgagee*], of the other part; and granted on a lease for a year, bearing date the day of the same month; certain messuages or tenements, lands, hereditaments, and premises, in the said indentures described, and therein mentioned to be situate, lying, and being in the parish of , in the county of , and to be called or known by the name of Farm, and to contain acres, or thereabouts, and to be now in the occupation of the said [*mortgagor*], and their appurtenances (being the same messuages or tenements, lands, hereditaments, and premises, as are mentioned and referred to in the above-written warrant of attorney) have (in consideration of the sum of pounds, by the said [*mortgagee*] to the said [*mortgagor*] paid, as in the said indenture of release is mentioned), been released and conveyed by the said [*mortgagor*], unto and to the use of the said [*mortgagee*], his heirs and assigns; *But* subject, nevertheless, to a proviso or condition in the said indenture of release contained, for the redemption of the same premises, on payment, by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of pounds, with interest for the same after the rate of 5*l.* for 100*l.* by the year, on the day of now next ensuing, without any deduction or abatement whatsoever: NOW IT IS HEREBY DECLARED, that the judgment to be entered up against the said [*mortgagor*], in pursuance of the above-written warrant of attorney, is intended and agreed to be a further security to the said [*mortgagee*], his executors, administrators, and assigns, for the said sum of pounds, and interest, secured by the said hereinbefore-recited indenture of release, as aforesaid, *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until default shall be made in payment of the said sum and interest, or some part thereof, contrary to the proviso or agreement for redemption in the same indenture contained; *And* that, in case and when such default shall be

WARRANT OF ATTORNEY IN EJECTMENT.

made, *Then*, and at any time thereafter, it shall be lawful for the said [*mortgagee*], his heirs, executors, administrators, or assigns, to sue out execution or executions upon or by virtue of the said judgment, for the recovery of the possession of the said hereditaments and premises, and their appurtenances, or any part thereof: AND IT IS HEREBY FURTHER DECLARED AND AGREED, that it shall not be necessary for the said [*mortgagee*], his heirs, executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, although the same shall be entered of record of or for the space of one year and upwards; *And* that the said [*mortgagor*], his heirs, executors, and administrators, shall not nor will have, receive, or take, any plea, exception, proceeding, or other benefit for the omission of the said [*mortgagee*], his heirs, executors, administrators, or assigns, to keep on foot or revive the said judgment, although the same shall have been entered of record for the space of one year and upwards; *And* that, if the said [*mortgagor*], his heirs, executors, or administrators, shall attempt so to do, by action or other legal proceeding or proceedings whatsoever, this present agreement shall and may be pleaded or shown in bar thereto, any sale or practice of the courts, or any of them, to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

[*Mortgagor.*]
[*Mortgagee.*]

OF AN ESTATE IN JAMAICA.

## Conveyance *of an Estate in* Jamaica, *for securing to Two Persons, as* First Mortgagees, *a Sum of Pounds and Interest, and to another Person, as* Second Mortgagee, *a Sum of Pounds and interest; the debt of the* First Mortgagees *to have priority of payment till it is reduced to the amount of the debt of the* Second Mortgagee, *and then both debts to be secured without any preference; And, subject thereto,* In trust *for the* Mortgagor. (*a*)

Parties.

THIS INDENTURE, made, &c. between [*trustee of the legal estate*], of, &c. of the first part; [*mortgagor*], of, &c. of the second part; [*first named of the first mortgagees*], of, &c. and [*second named of the first mortgagees*], of, &c. of the third part; [*second mortgagee*], of, &c. of the fourth part, and [*one trustee for the mortgagees*], of, &c. [*another trustee for the mortgagees*], of, &c. and [*other trustee for the mortgagees*], of, &c. of the fifth part: Recites. Whereas, by an indenture of lease and an indenture of release and assignment, the lease bearing date the day next before the day of the date of the release and assignment, and the re-

---

(*a*) It will be observed, that in this case the estate, after being first mortgaged, became the subject of an arrangement between the mortgagor and his creditors; that the bills of exchange given to the creditors were duly paid; that the estates were then limited to one of the parties who had joined in the bills of exchange for a term of five hundred years, for securing to him a sum of money due from the mortgagor, and subject thereto, to a trustee in fee for the mortgagor; that, by another deed of even date, the trustee, and the mortgagor, demised the same estates to another party, who had joined in the bills of exchange for a term of one thousand years, for securing to him a sum of money due from the mortgagor; and that by the above precedent the fee (subject to the two mortgages), was vested in trustees, upon trust to manage, sell, &c.

OF AN ESTATE IN JAMAICA.

Conveyance of a plantation called Hampton Park, to trustees, upon the trusts declared in the next-recited indenture.

lease and assignment bearing date the 16th day of January, 1803, and made, or expressed to be made, between [A. B.] and [C. D.], therein respectively described, of the first part; the said [*mortgagor*], of the second part; the said [A. B.], and [E. F.], and [G. H.], therein respectively described, of the third part; and [I. K.], therein described, of the fourth part: After reciting that the said [*mortgagor*] was indebted to the several persons, parties thereto, of the first and third parts, and several other persons, in divers large sums of money, upon bonds, bills, notes, and other securities, which from various disappointments he was rendered unable immediately to pay and discharge; *And* also reciting an indenture of lease and an indenture of release and assignment, bearing date respectively the 18th and 19th days of September, 1802, and made, &c. between the said [*mortgagor*], of the one part; and the said [A. B.] and [C. D.], of the other part; whereby, for the considerations in the said last-mentioned indenture of release and assignment expressed, several plantations, lands, and other hereditaments in the said Island of Jamaica, together with the negroes and other slaves, cattle, utensils, property, and effects, in, upon, and belonging to the said plantations and premises respectively, with their respective appurtenances, were conveyed and assigned respectively, by the said [*mortgagor*], unto and to the use of the said [A. B.] and [C. D.], their heirs, executors, administrators, and assigns, according to the nature thereof respectively, *Upon trust*, that in case the several persons to whom the said [*mortgagor*] stood indebted in any sum or sums of money, or their respective executors or administrators, should accept of the provision thereby made for them respectively, in satisfaction for their respective debts, and should testify such acceptance in the manner mentioned in the said indenture of the 19th day of September, 1802; *Then*, that the said [A. B.] and [C. D.], their heirs, executors, administrators, and assigns, should stand and be possessed of, and interested in, *All* and singular the same plantations, negroes, cattle, utensils, property, and effects respectively, upon such trusts and for such intents and purposes, and to be from time to time sold, conveyed, and

OF AN ESTATE IN JAMAICA.

disposed of in such manner, and in the meantime to be let, set, cultivated, improved, managed, and conducted in such manner as the majority in number and value of the creditors of the said [*mortgagor*], who should be present in person or by attorney, at any public meeting to be holden as in the same indenture is mentioned, should order, direct, or appoint:—It was by the said indenture of the 16th of January, 1803, WITNESSED, that in pursuance and part performance of certain resolutions of the creditors of the said [*mortgagor*], entered into at a public meeting held on the day of then last past, in pursuance of notice given for that purpose, in conformity to the provisions contained in the said indenture of the 19th of September, 1802, and for the considerations in the said indenture now in recital mentioned, the said [A. B.] and [C. D.], with the privity, consent, and direction, as well of the said [*mortgagor*] as of the said [E. F.] and [G. H.], testified as therein is mentioned, *Did* bargain, sell, release, and assign, and the said [*mortgagor*], at the request and by the direction and appointment of the parties to the said indenture now in recital, of the first and third parts, and of all other the creditors of the said [*mortgagor*] testified by the aforesaid resolutions, *Did* grant, release, assign, transfer, ratify, and confirm unto the said [I. K.], his heirs, executors, administrators, and assigns, *All that* plantation or newly erected settlement in the said Island of Jamaica, commonly called by the name of Hampton Park, and used as a coffee-plantation, and all and singular the lands thereto belonging, containing in the whole acres, or thereabouts, and also all messuages, tenements, dwelling-houses, still-houses, curing-houses, out-houses, buildings, edifices, and erections on the said plantation, or any part or parts thereof, erected and built, with the appurtenances; *All* which said premises are therein mentioned to be situate and being in the parish of St. James, in the Island of Jamaica; and also all and every the horses, mares, mules, and other live stock, coppers, mills, worms, worm-tubs, skimmers, drips, pots, pans, wains, waggons, carts, plantation utensils, and implements of planting, upon or belonging to the said plantation and premises (which said plantation, hereditaments,

and premises, were part of the plantations, hereditaments, and premises comprised in the said indentures of the 18th and 19th days of September, 1802), *To hold* all such and so many and such part and parts of the said plantation, lands, tenements, and hereditaments, as were of the nature of freehold, unto the said [I. K.], his heirs and assigns, *To the use* and behoof of the said [A. B.], [E. F.], and [G. H.], their heirs and assigns, for ever; *Nevertheless,* upon and subject to the trusts thereinafter expressed and declared concerning the same; *And to hold* all such, and so many and such parts of the same premises as were of the nature of chattel, interest, or personal estate, unto the said [I. K.], his executors, administrators, and assigns; *But,* nevertheless, as to the said last-mentioned premises or personal estate, *Upon trust,* that he, the said [I. K.], his executors or administrators, should, with all convenient speed, assign the same to the said [A. B.], [E. F.], and [G. H.], their executors, administrators, and assigns, upon such trusts, and to and for such intents and purposes, as in the said indenture now in recital are mentioned concerning the same; *And* by the said indenture of release and assignment now in recital, it was declared, that the said plantation and premises thereby granted, released, and assigned respectively, were so granted, released, and assigned as aforesaid, *Upon trust,* that they, the said [A. B.], [E. F.], and [G. H.], and the survivors and survivor of them, and the heirs of such survivor, should stand and be seised of such of the same hereditaments and premises as were of the nature of freehold, and also when and so soon as the said [I. K.], his executors or administrators, should have assigned so much and such part or parts thereof as were of the nature of chattel interest, or personal estate, to them, the said [A. B.], [E. F.], and [G. H.], their executors, administrators, and assigns, pursuant to the trust thereinbefore declared as aforesaid, *Upon trust,* that they, the said [A. B.], [E. F.], and [G. H.], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, should stand possessed of, and interested in, the same chattels or personal estate, upon the trusts and for the intents and purposes in the said indenture of release

OF AN ESTATE IN JAMAICA.

and assignment now in recital declared and hereinafter mentioned (that is to say), *Upon trust*, that they, the said [A. B.], [E. F.], and [G.H.], and the survivors and survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should, in manner therein mentioned, with all convenient speed, sell and dispose of the said plantation, lands, cattle, utensils, property, and effects, with the appurtenances, and should, in the meantime, let, set, conduct, and manage the same, and replenish the stock thereof, and receive and take all the rents and profits, consignments, income, and produce of the same, and of every part thereof, ***And*** should stand seised and possessed of, and interested in, the monies to arise and be received by, from, and by means of such sale and disposition of the said plantation, lands, hereditaments, cattle, utensils, effects, and premises, under the trusts therein aforesaid, and by and from the rents, issues, and profits, consignments, and annual produce to arise therefrom in the meantime, and until such sale and disposition; ***Upon*** such trusts and for such intents and purposes, and under and subject to such powers, provisos, agreements, and declarations, as in and by an indenture of release and assignment, or deed of trust, in the said indenture now in recital mentioned to be then already prepared, and intended to bear date the day next after the day of the date of the said indenture now in recital, and made, or expressed to be made, between the persons therein mentioned, being the same persons who are parties to the indenture of release and assignment, or deed of trust, next hereinafter-recited, were or should be expressed and declared of and concerning the same: AND WHEREAS, by indentures of lease and release and assignment, the lease bearing date the day next before the day of the date of the release and assignment, and the release and assignment bearing date the 17th day of January, 1803, (*b*) and made, or expressed

Conveyance of a plantation called Greenwich Park, to trustees, upon trust, for the benefit of the creditors of the mortgagor.

(*b*) The recitals in this precedent run long. They will, however, be useful, not only as *recitals*, but in showing the manner in which deeds similar to those recited, should be prepared.

OF AN ESTATE IN JAMAICA.

to be made, between the said [A. B.] and [C. D.], of the first part; the said [*mortgagor*], of the second part; the said [E. F.] and [G. H.], of the third part; the said [I. K.], of the fourth part; and the several persons whose names and seals are thereto subscribed and affixed, and are also mentioned in the schedule thereunder written or thereunto annexed, being respectively the creditors, or the agents or attornies of creditors, of the said [*mortgagor*], of the fifth part, It was witnessed, that in pursuance and part performance of the said resolutions of the creditors of the said [*mortgagor*], and for the considerations in the said indenture now in recital mentioned, the said [A. B.] and [C. D.], with the privity, consent, and direction, as well of the said [*mortgagor*] as of his said several creditors, parties thereto (testified as therein mentioned), *Did* bargain, sell, release, assign, transfer, and set over, and the said [*mortgagor*], at the request and by the direction and appointment of his said several creditors, parties thereto, *Did* grant, release, assign, transfer, ratify, and confirm, unto the said [I. K.], his heirs, executors, administrators, and assigns, *All* that plantation or sugar-work, in the said parish of St. James, in the said Island of Jamaica, then retaining and called by the name of Greenwich Park; *And*, also, all that, &c. (*parcels*); *And*, also, all mulattoes and other slaves then being upon and belonging to the said plantations and premises respectively, or some part or parts thereof respectively, and whose names were particularly mentioned and set down in the schedule written of the same, at foot of the said indenture now in recital, or thereunto annexed, together with the future issue, offspring, and increase of the females of the said slaves; *And*, also, all and every the horses, mares, &c. (*as ante*, p. 524), upon or belonging to the same plantations and premises respectively (*All* which said plantations, hereditaments, and premises thereby released and assigned respectively, or intended so to be, were other part of the said plantations, hereditaments, and premises comprised in the said indentures of the 18th and 19th of September, 1802), *To hold* such of the premises as were of the nature of freehold, with their appurtenances, unto the said [I. K.], his heirs and assigns, *To the use* of the said

OF AN ESTATE IN JAMAICA.

[A.B.], [E. F.], and [G. H.], their heirs and assigns, for ever, *Upon the trusts* therein, and hereinafter in part mentioned, concerning the same; *And to hold* such of the same premises as were of the nature of personal estate, unto the said [I. K.], his executors, administrators, and assigns, *Upon trust*, that he, the said [I. K.], his executors or administrators, should, with all convenient speed, assign the same unto the said [A. B.], [E. F.], and [G. H.], their executors, administrators, and assigns, upon and for the trusts, intents, and purposes therein, and in part hereinafter mentioned, concerning the same; *And*, by the said indenture of release and assignment now in recital, it was declared, that the said [A. B.], [E. F.], and [G. H.], and the survivors and survivor of them, and the heirs and assigns of such survivor, should stand and be seised of such of the said plantations, hereditaments, and premises, as were of the nature of freehold, *And*, also, that when and so soon as the said [I. K.], his executors or administrators, should have assigned so much and such part or parts of the said premises as was or were of the nature of personal estate, to them, the said [A. B.], [E. F.], and [G. H.], their executors, administrators, and assigns, pursuant to the trust thereinbefore described as aforesaid, they, the said [A. B.], [E. F,], and [G. H.], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, should stand and be possessed of, and interested in, the same chattels or personal estate, upon and for the trusts, intents, and purposes in the said indenture now in recital expressed and declared, of and concerning the same, in part hereinafter mentioned; (that is to say), *Upon trust*, that they, the said [A. B.], [E. F.], and [G. H.], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, should, during the term or space of two years, to be computed from the day of the date thereof, and until the same plantations and premises should be sold under or by virtue and in pursuance of the trusts and agreements thereinafter in that behalf contained, let, set, cultivate, improve, conduct, and manage, or cause to be let, set, cultivated, improved, conducted, and managed, all the same plantations and premises, and

OF AN ESTATE IN JAMAICA.

receive the rents, issues, and profits, consignments and produce, to arise therefrom, and replenish the stock thereof, and order and direct all things relative thereto, according to the best of their or his judgment, and should, by and out of the clear rents, issues, and profits, consignments, income, gains, and produce, to be received by, from, or by means of the said plantations and premises, after payment and satisfaction of the costs, charges, and expenses by the said indenture now in recital directed to be paid and defrayed thereout, pay, satisfy, and discharge all such sums and sum of money as should be and become due and owing, for or in respect of interest on the several and respective debts or sums of money due and owing from the said [*mortgagor*], to themselves, the said trustees, and all other the said creditors of the said [*mortgagor*], parties to and executing the said indenture now in recital, or for or in respect of such of them respectively as did or might bear or carry interest, after the rate of interest they so respectively carried; *And* also interest after the rate of 5*l.* for 100*l.* by the year, for or upon all such or such parts of the said debts or sums of money not carrying interest as should not be paid within six calendar months next after the date of the said indenture now in recital, or so much of the said interest monies respectively as the clear remaining monies to arise from the said trust premises under the trusts aforesaid, would extend to pay; *And*, subject thereto, should pay and allow unto the said [*mortgagor*], or his assigns, for and during his natural life, or until the said plantations and premises should be sold, an annuity or clear yearly sum of pounds, for and towards his support and maintenance, by equal half-yearly payments; *And*, subject to and after the several payments and deductions aforesaid, *Upon trust* that they, the said [A. B.], [E. F.], and [G. H.], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns, of such survivor, should pay, apply, or dispose of all the clear residue and surplus (if any) of the said rents, issues, and profits, income, gains, and produce, to arise by, from, or by means of the said plantations and premises, or the consignments to be made therefrom, in, for, or towards paying, satisfy-

OF AN ESTATE IN JAMAICA.

ing, and discharging, in the manner therein mentioned, to and between themselves and all other the creditors of the said [*mortgagor*], parties thereto, their respective executors, administrators, or assigns, the several and respective debts or sums of money mentioned and set opposite to the respective names of the said several creditors in the schedule thereof thereunder written, or thereunto annexed, or such of them, or such part or parts thereof respectively, as upon a proper investigation relative thereto should appear to be justly due and owing from the said [*mortgagor*], to the said several creditors, parties thereto; *And*, by the said indenture of release and assignment now in recital, the said trustees were authorized, at the expiration of the said two years, or sooner, with such consent as is therein mentioned, to make sale and absolutely dispose of the said plantations, or either of them, with the lands, hereditaments, stock, effects, and premises thereunto respectively belonging, either together or in parcels, by public sale or private contract, in London or Jamaica, unto any person or persons whomsoever, for the best price or prices in money that could be reasonably had or obtained for the same, and to pay and apply the clear monies to arise from such sale or sales, or a sufficient part thereof, for and towards payment and satisfaction to themselves, and all other the said creditors of the said [*mortgagor*], parties thereto, of the said several and respective debts due and owing to them respectively, together with interest as therein mentioned, rateably and proportionably, and without any preference or priority; *And*, by the said indenture now in recital, after reciting the said indentures of lease and release and assignment, of the 15th and 16th of January, 1803, It was witnessed and declared and agreed, that the said [A. B.], [E. F.], and [G. H.], and the survivors and survivor of them, and the heirs, executors, administrators, or assigns of such survivor, should stand possessed of, and interested in, all the clear monies to arise by or from the sale and disposition of the said plantation, called Hampton Park, and the lands, hereditaments, tenements, stock, effects, and premises thereto belonging, or otherwise comprised in and conveyed by the said therein and firstly hereinbefore-recited indentures of lease

Declaration that the trustees should stand possessed of the monies arising from the sale of the Hampton Park estate, upon the like trusts, for the benefit of the creditors, as were thereinbefore declared for their benefit, of the monies to arise from the Greenwich Park estate.

OF AN ESTATE IN JAMAICA.

and release and assignment, and from the consignments and produce thereof in the meantime, upon such and the same trusts, intents, and purposes, for the benefit of the creditors of the said [*mortgagor*], rateably and proportionably to the amount of the respective debts so due and owing to them respectively, as aforesaid, as were thereinbefore mentioned and declared, of and concerning the clear monies to arise by the sale and disposition of the rents, profits, and consignments to arise from the several plantations and other premises respectively thereinbefore granted, released, and assigned, or intended so to be, and their respective appurtenances. AND WHEREAS, by indentures of lease and release and assignment, the lease bearing date the day next before the day of the date of the release and assignment, and the release and assignment bearing date the 6th day of January, 1806, and made, or expressed to be made, between the said [*mortgagor*], of the first part; the said [A. B.], [E. F.], and [G. H.], of the second part; the said [*first-named of the first mortgagees*] and [*second mortgagee*], of the third part; [L. M.], therein described, of the fourth part; the said [A. B] and [N. O.] and [P. Q.] therein respectively described, of the fifth part; the said [I. K.], [R. S.], and [T. U.], therein respectively described (being respectively creditors of the said [*mortgagor*]), of the sixth part; and the several persons whose names and seals are thereunto subscribed and affixed, and who are also mentioned in the first schedule thereunder written, or thereunto annexed (being creditors, or agents or attornies of creditors, of the said [*mortgagor*]), of the seventh part, after reciting the said recited indentures of the 15th and 16th of January, 1803, and 16th and 17th days of January, 1803, *And* that the said [I. K.] had not then executed any assignment of the chattels or other personal estate aforesaid, assigned to him, *In trust* to assign the same in manner therein and hereinbefore mentioned; *And* also reciting that the said [A. B.], [E. F.], and [G. H.], had proceeded to act in the trusts of the said recited indenture, so far as respected the management, cultivation, and improvement of the said several plantations and estates, and receiving the rents,

Conveyance and assignment of the trust premises from the mortgagor and the trustees of the before-recited deeds, to [L. M.], to the use (as to the real estate), of one of the old trustees and two new trustees, upon the trusts after mentioned, and in trust (as to the personal estate), to assign the same, to the old trustee and the new trustees, upon the trusts, viz.:

OF AN ESTATE IN JAMAICA.

issues, profits, consignments, and produce thereof, but had not sold or disposed of the same plantations and estates, or any of them, or any part thereof respectively; *And* also reciting that the said [*mortgagor*] was indebted to the several persons respectively, parties to the now-reciting indenture of the seventh part, in the several sums of money set opposite to their respective names in the first schedule thereunder written, or thereunto annexed, *And* that the said several creditors of the said [*mortgagor*], who were parties to, and had executed the said recited indenture of the 17th of January, 1803, were amongst or included with the several creditors, parties thereto, of the sixth and seventh parts (exclusively of the said [E. F.]), *And* also reciting that it had been agreed between the said [*mortgagor*] and his several creditors, parties thereto, that the trusts of the said indentures, or deeds of trust of the 16th and 17th of January, 1803, should cease and be at an end, *And* that the said several plantations, estates, and premises in the said Island of Jamaica, therein respectively mentioned and comprised, should be conveyed and vested in the said [A. B.] and two new trustees, and that a new arrangement should be made for the payment of the debts and sums of money due to the several creditors parties to the same indentures respectively, and also to the several other creditors parties to and respectively executing the said indenture now in recital, *And* also reciting that, at a meeting of the creditors of the said [*mortgagor*], held on the day of then last past, at the Guildhall Coffee-House, in the city of London, under the said deed of trust, of the 17th of January, 1803, and in pursuance of an advertisement published in the London Gazette, of the day of then last past, in conformity with the provisions contained in the said trust-deed, *It* was proposed to the said meeting, on the behalf of the said [*mortgagor*], that the creditors of the said [*mortgagor*], in the said proposition mentioned, should be paid the sum of pounds, in discharge of their respective demands on the said [*mortgagor*], by bills of exchange, to be drawn by the said [*second mortgagee*], upon and accepted by the said [*first-named of the first mortgagees*], payable to, and indorsed by the said [*mort-*

OF AN ESTATE IN JAMAICA.

*gagor*], and which bills were to be made payable in equal proportions, at one, two, three, and four years, from the 1st day of , 1806, with interest included, except in a few instances of small sums, where the bills were to be made payable at one and two years ; *And* that, in order to secure the due and punctual payment of the said bills of exchange, *All* the estate of the said [*mortgagor*] in the said Island of Jamaica, and the stock thereon, vested in the trustees, under and by virtue of the said trust-deed of the 17th of January, 1803, and the other deeds therein referred to, should be conveyed and assigned to new trustees, *In trust*, to permit the said [*first-named of the first mortgagees*] and [*second mortgagee*] to take possession of and manage the estates, and to receive and to dispose of the produce aud profits thereof, until default should be made in payment of all or any of the bills of exchange to be given by them as aforesaid; *And*, from and after such default, the new trustees should, by sale or mortgage of the estate, raise such sum of money as should be sufficient to pay the said bills, or such of them as should not be duly paid by the acceptor, drawer, or indorser thereof, with interest, costs, charges, and expenses; *And* that until such sale or mortgage should take effect, the new trustees should take possession of and manage the estates, and apply the net produce thereof towards the discharge of the said bills, and after complete payment and discharge of the said bills, either by the acceptor, drawer, or indorser, or out of the said estates, the new trustees should convey the same estates, if not sold or mortgaged, and all their right, title, and interest therein, if mortgaged or incumbered, to the said [*first-named of the first mortgagees*] and [*second mortgagee*], their heirs, executors, administrators, and assigns, or as they should direct or appoint, *And* that it was further proposed, that the balance then remaining in the hands of the said [A. B.], [E. F.], and [G. H.], the trustees appointed by the said trust-deed of the 17th of January, 1803, or in the hands of any of them, should be paid to the said [*mortgagor*], to enable him to discharge certain debts in the said indenture now in recital mentioned; *And* that it was also proposed that the said creditors, except the said [*first-named of the first mortgagees*], should accept the bills of exchange and other

OF AN ESTATE IN JAMAICA.

sums therein mentioned, in satisfaction and discharge of their demands on the said [*mortgagor*], and should release him from the same, but without prejudice (so far as he could stipulate for the same) to their recourse to or upon any other person or persons, for the recovery of the debts due to them or any of them; *And* that the said [*mortgagor*] was to remain liable for the payment of the new bills of exchange to be given in pursuance of the above proposal, as the indorser thereof; *And also reciting*, that the said proposals having been taken into consideration by the creditors present and those acting for them, it was resolved that the same should be acceded to, and that the deeds necessary for carrying the same into effect should be executed by the trustees as soon as the same should be prepared, and the said creditors did thereby agree and engage to confirm and execute the same whenever called upon for that purpose, and that the estates in Jamaica should be conveyed to the said [A. B.], and [N. O.], and such other person as they should nominate as new trustees, upon the trusts mentioned in the said firstly thereinbefore-recited proposal; *And* also reciting that, in pursuance of the several propositions and resolutions so made and passed at the said meeting of the creditors of the said [*mortgagor*], on the 5th of October, 1805, the said [*second mortgagee*] had drawn, &c. (*the several bills of exchange as agreed on*); *And* also reciting that, in further pursuance of the said proposals and resolutions, the said [A. B.], [E. F.], and [G. H.] had, on the day of the date of the said indenture now in recital, paid over into the hands of the said [*mortgagor,*] *All* sums of money then remaining in their hands by virtue of the said trust-deed of the 17th of January, 1803, to be by him applied as aforesaid; *And* further reciting, that the said [A. B.] and [N. O.] had nominated and appointed the said [P. Q.] to be a co-trustee with them for the purposes thereinafter mentioned; *It was* by the said indenture now in recital *witnessed*, that in pursuance of the said resolutions of the creditors of the said [*mortgagor*], so made as aforesaid, and in order to carry the same into execution, and in consideration of the premises, the said [A. B.], [E. F.], and [G. H.], at the request and by the direction, and upon the nomination as well of the said [*first-named of the mort-*

*gagees*] and [*second mortgagee*], as of the said [*mortgagor*], and his several creditors, parties thereto, of the sixth and seventh parts (testified as therein mentioned), *Did* bargain, sell, release, and assign, and the said [*mortgagor*], at the request and by the direction, and upon the nomination as well of the said [*first-named of the first mortgagees*] and [*second mortgagee*], as of the said several creditors, parties thereto, of the sixth and seventh parts (testified as thereinbefore mentioned), *Did* grant, release, assign, ratify, and confirm, unto the said [L. M.], his heirs, executors, administrators, and assigns, the said plantations called Hampton Park, &c., together with the lands thereto belonging, &c. &c., *And*, also, all other the plantations, lands, tenements, hereditaments, and estates as were of the nature of freehold, mentioned and comprised in the said indentures of lease and release and assignment of the 15th and 16th of January, 1803, and their appurtenances; *And* also all and every the negroes, slaves, horses, &c. (*as ante*, p. 524, 527), upon or belonging to the said hereditaments and premises, or any part or parts thereof, *To hold* all such of the said premises as were of the nature of freehold, unto the said [L. M.], his heirs and assigns, *To* the use of the said [A. B.], [N. O.], and [P. Q.], their heirs and assigns, discharged from the trusts of the before-recited indentures, but upon the trusts after declared; *And to hold* such of the said premises as were of the nature of the personal estate unto [L. M.], his executors and administrators, freed and discharged from the trusts of the before-recited indentures, but upon trust to assign the same to [A. B.], [N. O.], and [P. Q.], their executors, administrators, and assigns, upon the trusts in the indenture now in recital contained (*as ante*, p. 527-8); *And* by the said indenture of release and assignment now in recital, it was declared, that the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, should stand and be seised of, and interested in, such of the said plantations, hereditaments, and premises, as were of the nature of freehold, and their appurtenances; *And* that, when and so soon as the said [L. M.], his executors or administrators, should have assigned so much

Upon trust, if the bills of exchange should be regularly paid, to reconvey and re-assign the trust premises; but if default should be made in payment of the bills of exchange, then upon trust to

OF AN ESTATE IN JAMAICA.

sell and dispose of the said trust premises, And in the mean time to cultivate and manage the estates.

and such parts of the said premises as were of the nature of personal estate, to them, the said [A. B.], [N. O.], and [P. Q.], their executors, administrators, and assigns, pursuant to the trusts aforesaid, they, the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the executors, administrators, or assigns of such survivor, should stand seised and possessed of, and interested in, the same estate, effects, and premises, *Upon trust*, that in case the said several bills of exchange, so drawn by the said [*second mortgagee*], upon and accepted by the said [*first-named of the first mortgagees*], and payable to and indorsed by the said [*mortgagor*], as therein and hereinbefore is mentioned, should be duly and regularly paid and discharged, as and when the same respectively should become due and payable, then that they, the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, should thenceforth convey, assign, and make over, all and every the said plantations, messuages, lands, tenements, stock, effects, and premises, with their appurtenances, unto the said [*first-named of the first mortgagees*] and [*second mortgagee*], their heirs, executors, and administrators respectively, or to such person or persons' use or uses, and in such manner, as they, or either of them, should appoint; *And* in the meantime, and until any such conveyance, assignment, and disposition should be made thereof respectively, *Upon trust*, that they, the said [A. B.], [N. O.], and [P. Q.], their heirs, executors, administrators, and assigns respectively, should stand seised and possessed of, and interested in, the said several plantations, hereditaments, and premises respectively, *In trust* for the said [*first-named of the first mortgagees*] and [*second mortgagee*], their executors, administrators, and assigns respectively, according to the nature and quality of the different estates and interests therein respectively; *And*, upon further trust, that in case default should be made in payment of the said several bills of exchange, as and when the same should respectively become due and payable, or any of them, or any part thereof respectively, they, the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the heirs, ex-

ecutors, administrators, and assigns of such survivor, should, at any time or times thereafter, absolutely sell, convey, assign, or otherwise dispose of the same several plantations, hereditaments, and premises respectively, either entirely and altogether, or in parcels by public auction or private contract, in London, Jamaica, or elsewhere, to any person or persons willing to become the purchaser or purchasers thereof respectively, for such price or prices, or sum or sums of money, as to the said [A. B.], [N. O.], and [P. Q.], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, should seem proper; *And* in the mean time should convey, demise, assign, or otherwise dispose of the same respectively, or any part or parts thereof respectively, by way of mortgage, to any person or persons willing to advance money on the security of the same premises respectively, or any part or parts thereof respectively; *And*, by the said indenture of release and assignment now in recital, it was agreed and declared, that in default of payment of the said several bills of exchange, or any of them, or any part thereof, and until the said plantations, hereditaments, and premises, and every part thereof, should be absolutely sold and disposed of, in pursuance of the trusts aforesaid, they, the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the heirs, executors, administrators, or assigns of such survivor, should cultivate, maintain, stock, and keep up the said plantations, hereditaments, and premises, or such of them as should not be sold, in manner therein mentioned, *And* should pay, apply, and dispose of the monies which should come to the hands of them, the said [A. B.], [N. O.], and [P. Q.], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, by the sales, mortgages, or other dispositions which should be made in pursuance of the said indenture now in recital, or by means of the rents, issues, profits, sugars, and other produce of the said several plantations, hereditaments, and premises respectively, or otherwise, by virtue of the said indenture now in recital, *Upon* the trusts in the same indenture and hereinafter mentioned; (that is to say), upon

OF AN ESTATE IN JAMAICA.

trust, that they, the said [A. B.], [N. O.], and [P. Q.], and the survivors and survivor of them, and the heirs, executors, administrators, or assigns of such survivor, should, in the first place, pay, discharge, and satisfy all costs, charges, and expenses attending or occasioned by the trusts declared in the said indenture now in recital; *And*, in the next place, pay to the creditors of the said [*mortgagor*], parties thereto, of the seventh part, interest, after the rate of 5*l.* for 100*l.* by the year, on the respective debts then due and owing to them, to be computed from the time, or respective times, when the said bills of exchange, so drawn by the said [*second mortgagee*] upon, and accepted by, the said [*first-named of the first mortgagees*], as aforesaid, and which, in the whole or in part, remained unpaid, should have become due and payable; *And*, in the next place, should pay to the said several holders thereof, for the time being, the sums of money mentioned in the bills specified in the first schedule thereunder written, and the interest, costs, charges, and expenses, which should have become payable for or in respect of the same, by reason of the non-payment thereof, *And* should pay the surplus or residue of the said monies (if any), after answering the trusts aforesaid, unto the said [*first-named of the first mortgagees*] and [*second mortgagee*], their executors, administrators, or assigns; *And*, by the said indenture of release and assignment now in recital, it was further agreed and declared, that the said [*first-named of the first mortgagees*] and [*second mortgagee*], their heirs, executors, administrators, and assigns, should stand seised of, and interested in, all and singular the said plantations, hereditaments, and premises respectively, or such part or parts of the same as should be conveyed, assigned, and transferred to them respectively, as thereinbefore mentioned, *And*, also, of and in the rents, issues, profits, sugars, and other produce of the said several plantations, hereditaments, and premises, as the same should respectively arise and be received by or in consequence of the management, cultivation, and improvement of the same several plantations, messuages, hereditaments, and premises, *And* also of and in all other sums of money which should come to their or any of their hands or hand, by vir-

Declaration that the trustees stand possessed of the monies arising from sales and consignments upon trust, to pay costs and expenses, and then to pay the creditors of the mortgagor the sums of money secured by the bills of exchange within mentioned;

and to pay the residue to the first-named of the first mortgagees and second mortgagee.

tue of the said indenture now in recital, *Upon* and for such trusts, intents, and purposes as were or should be mentioned, declared, or contained, of and concerning the same respectively, in and by an indenture bearing even date with the said indenture now in recital, and made, or intended to be made, between the said [*mortgagor*], [*first-named of the first mortgagees*], and [*second mortgagee*], and the several other persons therein mentioned or referred to; *And*, by the said indenture of release and assignment now in recital, it was further witnessed, that all and every the said creditors, parties thereto, of the seventh part, who by themselves, or by persons by them respectively authorized, had sealed and executed the said indenture now in recital, and for and in consideration of the said several bills of exchange so drawn by the said [*second mortgagee*] upon, and accepted by, the said [*first-named of the first mortgagees*[, for the purposes therein and hereinbefore mentioned, and in consideration of the release and assignment thereby made by the said [*mortgagor*] as aforesaid, *Did* remise, release, and for ever quit claim unto the said [*mortgagor*], his heirs, executors, and administrators, *All* and all manner of actions, suits, claims, and demands whatsoever, which they or any of them, their or any of their heirs, executors, or administrators, then had, or thereafter should or might have, challenge, or demand, against the said [*mortgagor*], his heirs, executors, or administrators, or his or their estate or effects, or any of them, for or by reason or means or on account of the debts to them or any of them respectively due and owing from the said [*mortgagor*], or any interest, exchange, or commission due or demandable for the same, or of any other matter, cause, or thing whatsoever, except with respect to the said several bills of exchange so drawn by the said [*second mortgagee*] upon, and accepted by, the said [*first-named of the first mortgagees*] as therein and hereinbefore is mentioned: And whereas, by a deed-poll or instrument in writing, under the hand and seal of the said [L. M.], bearing even date with and indorsed upon the said lastly hereinbefore-recited indenture of release and assignment, the said [L. M.], in pursuance and performance of the trusts reposed in him by the said

Declaration that the first-named of the first mortgagee and the second mortgagee should stand possessed of such of the trust premises as should not be sold, and of such surplus monies as aforesaid, upon certain trusts intended to be declared thereof in an indenture of even date.

The release by the creditors in consideration of the provision made for them.

The assignment from [L. M.] of the personal property to the old and new trustees, upon the trusts of the last-recited indenture.

OF AN ESTATE IN JAMAICA.

indenture, did bargain, sell, assign, transfer, and set over unto the said [A. B.], [N. O.], and [P. Q.], their executors, administrators, and assigns, *All* such and so many, and such part and parts, as was or were of the nature of personal estate, of the negroes and other slaves, and of the horses, &c. as *ante*, p. 524, conveyed and assigned by the said last-mentioned indenture, as aforesaid, to the said [L. M.], his executors, administrators, and assigns, *In trust*, as in the said indenture was mentioned, with their appurtenances, *To hold* the same unto the said [A. B.], [N. O.], and [P. Q.], their executors, administrators, and assigns, *Upon the trusts*, and with, under, and subject to the powers, provisoes, agreements, and declarations, in the said lastly hereinbefore-recited indenture mentioned or contained, of and concerning the same premises; AND WHEREAS, by the said indenture referred to in the said indenture of the 6th of January, 1806, and therein mentioned, to bear, or intended to bear, even date therewith, it was intended to have been declared, that the said [*first-named of the first mortgagees*] and [*second mortgagee*], their heirs, executors, administrators, and assigns, should stand seised and possessed of and interested in the said plantations, hereditaments, and premises, so conveyed and assigned to them, respectively, as therein and hereinbefore, *And* also of and in the rents, issues, and profits thereof, as the same should respectively arise, and be received by or in consequence of the management, cultivation, and improvement of the same several plantations, hereditaments, and premises, *And* of and in all other sums of money which should come to their hands or hand, by virtue of or under the said indenture of the 6th of January, 1806, upon certain trusts for indemnifying the said [*first-named of the first mortgagees*], his heirs, executors, and administrators, from the said several bills of exchange therein and hereinbefore mentioned to have been drawn by the said [*second mortgagee*], upon and accepted by the said [*first-named of the first mortgagees*], and payable to and indorsed by the said [*mortgagor*], and from and against several other bills, bonds, notes, and other securities, on the said indenture mentioned or referred to, and which the said [*first-named of the first mortgagees*] had

Recital, that by the indenture referred to by the last-recited indenture of release and assignment, it was intended to have been declared, that the first-named of the first mortgagees and second mortgagee should stand possessed of the trust premises after payment of the bills for indemnifying them for joining in the bills, and in other notes therein mentioned, but that such indenture was not executed.

given, accepted, drawn, or executed, for the use and accommodation, or on the behalf of the said [*mortgagor*], as therein also is mentioned, but which said indenture was never executed; AND WHEREAS the said several bills of exchange, the payment of which was intended to be secured by the said indenture of lease, and release and assignment, of the 5th and 6th of January, 1806, as aforesaid, have been duly paid, and the several other sums of money secured or engaged to be paid by the said [*first-named of the first mortgagees*] and [*second mortgagee*], or either of them, to the creditors of the said [*mortgagor*], have been also duly paid and satisfied; AND WHEREAS, on a balance of accounts between the said [*first-named of the first mortgagees*] and [*mortgagor*], stated and settled on the 1st day of January now last past, it appeared, that the sum of 19,500*l.* was then due and owing from the said [*mortgagor*] to the said [*first-named of the first mortgagees*]; *And* on a balance of accounts between the said [*mortgagor*] and [*second mortgagee*], stated and settled on the same 1st day of January, it appeared that the sum of 9620*l.* was then due and owing from the said [*mortgagor*] to the said [*second mortgagee*]; AND WHEREAS the said [*first-named of the first mortgagees*] and [*second-named of the first mortgagees*] have, from the said 1st day of January now last past, carried on the business of West India merchants, in copartnership, under the firm of "[*first-named of the first mortgagees*] and [*second-named of the first mortgagees*];" *And* in conformity to certain arrangements agreed upon between them, the said sum of 19,500*l.*, so found due from the said [*mortgagor*] to the said [*first-named of the first mortgagees*], as aforesaid, was thereupon transferred by him to the joint or copartnership account of the said [*first mortgagees*]; AND WHEREAS it was lately arranged and agreed by and between or amongst the said [*mortgagor*], [*first mortgagees*], and [*second mortgagee*], that the said sum of 19,500*l.*, transferred to the said joint or copartnership account of the said [*first mortgagees*], in manner aforesaid, with interest for the same in the mean time, should be secured to said [*first mortgagees*], their executors, administrators, and assigns, by a mortgage of the said plantations, hereditaments,

That the bills of exchange have been duly paid.

That, on a balance of accounts, the sum of 19,500*l.* was found due to the first-named of the first mortgagees, and the sum of 9620*l.* to the second mortgagee.

That the first mortgagees have carried on business, from the 1st of January last, as copartners, and that the debt due to the first-named of the first mortgagees had been transferred to the copartnership.

The agreement that the sum of 19,500*l.*, due to the first mortgagees by them, with interest, should be secured by a mortgage of the plantations, and by a warrant of attorney in ejectment;

OF AN ESTATE IN JAMAICA.

and premises, comprised in and conveyed and assigned by the said indenture of release and assignment of the 6th of January, 1806, and also by a warrant of attorney, to confess judgment in an action of ejectment, (*c*) for recovering the possession of the premises; *And* that the said sum of 9620*l.*, so found due and owing from the said [*mortgagor*] to the said [*second mortgagee*], as hereinbefore is mentioned, should be secured to the said [*second mortgagee*], his executors, administrators, and assigns, by a mortgage of the same plantations, hereditaments, and premises, subject to the security agreed to be made to the said [*first mortgagees*], as aforesaid; *And* that, subject to the securities so agreed to be made as aforesaid, the said plantations, hereditaments, and premises, should be conveyed and assigned respectively to the said [*trustees*], their heirs, executors, administrators, and assigns, respectively, upon and for the trusts, intents, and purposes, hereinafter expressed, declared, or contained, of and concerning the same; And whereas, in pursuance and part performance of the said agreement between the said [*mortgagor*] and [*first mortgagees*], the said [A. B.], [N. O.], and [P. Q.], have this day executed to [X. Y.] and [Y. Z.], a warrant of attorney, to confess, in the names of them, the said [A. B.], [N. O], and [P. Q.], judgment, in an action of ejectment, to be brought in the proper court of the said Island of Jamaica, at the suit of [V. W.], party to the next hereinafter-recited indenture, for recovering the possession of the hereditaments and premises agreed to be mortgaged, as aforesaid; And whereas, by an indenture of lease and an indenture of release and assignment, the lease bearing date, &c., and the release and assignment bearing even date with these presents, and made, or expressed to be made, betweeu the said [A. B.], [N. O.], and [P. Q.], of the first part; the said [*first-named of the first mortgagees*], of the second part; the said [*second mortgagee*], of the third part; the said [*mortgagor*], of the fourth part; the said [*trustee of the legal estate*], of

and that, subject thereto, the sum of 9620*l.*, due to the second mortgagee, be secured by a mortgage of the same plantations;

and that, subject to both mortgages, the plantations should be conveyed to the trustees, upon the trusts after mentioned.

That, in pursuance of the agreement, a warrant of attorney in ejectment had been executed.

That, by an indenture of even date, the plantations, &c., had been limited to the first mortgagees for a term of five hundred years, and, subject thereto, to a trustee in fee for the mortgagee.

(*c*) For a form of such warrant of attorney, see *ante*, p. 518.

the fifth part; and the said [V. W.], of the sixth part; in pursuance and further performance of the said agreement, so far as relates to the security agreed to be made to the said [*first mortgagees*], as aforesaid, and in consideration of the premises, the said [A. B.], [N. O.], and [P. Q.], at the request and by the direction of the said [*first-named of the first mortgagees*], [*second mortgagee*], and [*mortgagor*] (testified as therein mentioned), ***Did*** bargain, sell, and release, ***And*** the said [*mortgagor*], at the request and by the direction of the said [*first mortgagees*], and with the privity, consent, and approbation of the said [*second mortgagee*] (testified respectively as therein aforesaid), ***Did*** grant, release, ratify, and confirm, unto the said [*trustee of the legal estate*], his heirs and assigns, the said plantations or newly-erected settlements, called by the names of Hampton Park, &c., together with the lands thereto belonging, and the said plantation or sugar-works, &c., ***And*** all and singular other the plantations, lands, tenements, and hereditaments, mentioned and comprised in the said indenture of the 6th of January, 1806, which are of the nature of freehold or real estate, with their respective appurtenances, ***And*** also all messuages, tenements, or dwelling-houses, mill-houses, boiling-houses, curing-houses, still-houses, cottages, edifices, erections, and buildings, on the said several plantations, or any part thereof respectively, erected and built, and standing and being with their respective appurtenances; ***And*** also all and every the negroes, and other slaves, with the progeny and increase of the females of the same negroes and other slaves, horses, mares, mules, &c., then upon and belonging to, or which, at any time during so long as any principal money or interest should remain due on the security of the said indenture now in recital, should be upon or belonging to the said several plantations, hereditaments, and premises, or any part or parcel thereof, with their respective appurtenances (save and except out of the grant, bargain, sale, release, and confirmation, thereby made, or intended so to be, all such of the same premises (if any) as were of the nature of personal estate), ***To hold*** the said plantations, hereditaments, and premises, thereby released, and their appurtenances (freed

OF AN ESTATE IN JAMAICA.

and for ever discharged of and from the trusts, powers, provisoes, declarations, and agreements, declared and contained in the said indenture of the 6th of January, 1806, of and concerning the same), unto the said [*trustee of the legal estate*], his heirs and assigns, *To the use* of the said [V. W.], his executors, administrators, and assigns, for the term of five hundred years, without impeachment of waste, *Upon trust*, nevertheless, forthwith to assign the same premises unto the said [*first mortgagees*], their executors, administrators, and assigns, subject to the proviso or condition, and covenant or agreement, thereinafter contained, for redemption of the same premises, and hereinafter mentioned, *And* from and after the expiration or so determination of the said term of five hundred years, *To the use* of the said [*trustee of legal estate*], his heirs and assigns, *In trust* for the said [*mortgagor*], his heirs and assigns, for ever; *And* by the said indenture now in recital, in pursuance and further performance of the said agreement, so far as relates to the security agreed to be made to the [*first mortgagees*], as aforesaid, the said [A. B.], [N. O.], and [P. Q.], at the request and by the direction of the said [*first-named of the first mortgagees*], [*second mortgagee*], and [*mortgagor*] (testified as therein is mentioned), did bargain, sell, assign, and set over, *And* the said [*mortgagor*], at the request and by the direction of the said [*first mortgagees*], and with the privity, consent, and approbation of the said [*second mortgagee*] (testified respectively as therein aforesaid), did bargain, sell, assign, transfer, and set over, unto the said [V. W.], his executors, administrators, and assigns, *All* such and so many and such part and parts as was or were of the nature of personal estate of the negroes and other slaves, and of the horses, &c. (as *ante*, p. 524), then upon or belonging to, or which, at any time during so long as any money shall remain due and owing upon the said security, should be upon or belonging to the said plantations, estates, lands, and premises, respectively, thereinbefore granted, released, and assigned, or intended so to be, *To hold* the same (freed, &c. *as in the last habendum*, p. 543,) unto the said [V. W.], his executors, administrators, and assigns, *Upon trust*, nevertheless, forthwith to assign the same premises to the said

That, by the same indenture, the personal estate had been assigned to V. W., upon trust to assign the same to the first mortgagees.

[*first mortgagees*], their executors, administrators, and assigns, subject to the proviso or condition, and covenant or agreement for redemption of the same premises, thereinafter contained and hereinafter mentioned (that is to say), In the said indenture now in recital is contained a proviso or condition, and covenant or agreement, for redemption of all and singular the premises thereby limited in use, and assigned, respectively, unto the said [V. W.], his executors, administrators, and assigns, as aforesaid, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*first mortgagees*], their heirs, executors, administrators, or assigns, of the said sum of 19,500*l.*, with interest for the same, after the rate of 5*l.* for 100*l.* by the year, on or at the days or times, and in manner in the said indenture now in recital mentioned or appointed for the payment thereof respectively; AND WHEREAS, by an indenture of assignment bearing even date with, and indorsed upon, the said lastly hereinbefore-recited indenture, and made, or expressed to be made, between the said [V. W.], of the first part, the said [*mortgagor*], of the second part, and the said [*first mortgagees*], of the third part, in pursuance and execution of the trusts reposed in the said [V. W.] by the said last-mentioned indenture, he, the said [V. W.], at the request and by the direction of the said [*mortgagor*], (testified as therein mentioned), ***Did*** bargain, sell, assign, transfer, and set over, unto the said [*first mortgagees*], their executors, administrators, and assigns, the plantations, lands, tenements, hereditaments, negroes, cattle, stock, and all other the premises limited in use, and assigned respectively to him, the said [V. W.], his executors, administrators, and assigns, by the said last-mentioned indenture as aforesaid, and their appurtenances, ***To hold*** all such, and so many, and such part and parts of the same premises as were or was comprised in the said term of five hundred years, with their appurtenances, unto the said [*first mortgagees*], their executors, administrators, and assigns, for the residue then to come and unexpired of the said term, ***And to hold*** all such, and so many, and such part or parts of the same premises as were or was not comprised in the said term of

That in the same indenture was contained a proviso for redemption, on payment by the mortgagor to the first mortgagees of the sum of 19,500*l.* and interest.

The assignment of the personal estate from V. W. to the first mortgagees.

OF AN ESTATE IN JAMAICA.

five hundred years, with their appurtenances, unto the said [*first mortgagees*], their executors, administrators, and assigns, subject, nevertheless, as to all and singular the premises thereinbefore mentioned to be thereby assigned, to the proviso or condition, and covenant or agreement, contained in the said firstly hereinbefore-recited indenture of even date with these presents, for the redemption of the same; *And, by the said indenture* now in recital, the said [V. W.] *Did* bargain, sell, and assign to the said [*first mortgagees*], their executors, administrators, and assigns, the said warrant of attorney, executed for confessing judgment in any action or actions of ejectment for recovering possession of the said plantations, hereditaments, and premises, as hereinbefore is mentioned, and the judgment to be entered up thereon, and the full benefit and advantage thereof, *To hold* the same unto the [*first mortgagees*], their executors, administrators, and assigns; AND WHEREAS, by another indenture, bearing even date with these presents, executed immediately after the sealing and delivering of the said lastly hereinbefore-recited indenture, and made, or expressed to be made, between the said [*trustee of the legal estate*], of the first part, the said [*mortgagor*], of the second part, and the said [*second mortgagee*], of the third part, in pursuance and performance of the said agreement, so far as relates to the security agreed to be made to the said [*second mortgagee*], as aforesaid, and in consideration of the premises, the said [*trustee of the legal estate*], at the request and by the direction of the said [*mortgagor*], (testified as therein is mentioned) *As* to such only of the premises as are of the nature of freehold or real estate, *Did* bargain, sell, and demise, *And* the said [*mortgagor*], as to all and singular the premises, *Did* grant, bargain, sell, demise, and confirm, unto the said [*second mortgagee*], his executors, administrators, and assigns, *All* and singular the said plantations, lands, tenements, hereditaments, and premises comprised in and granted, released, and assigned respectively by the said lastly hereinbefore-recited indenture of even date with these presents, or intended so to be, and their respective appurtenances, *And* also all the live and dead stock whatsoever not com-

Also, assignment of the warrant of attorney in ejectment.

That, by another indenture of even date, the same plantations were demised to the second mortgagee for a term of 1000 years, subject to redemption on payment by the mortgagor of the sum of 9620*l.* and interest, but without prejudice to the first mortgage.

OF AN ESTATE IN JAMAICA.

prised in, or granted, released, or assigned, by the said last-mentioned indenture, which at any time, during so long as any principal money or interest should remain due on the said security intended to be made by the said indenture now in recital, should be upon or belong to the same plantations, hereditaments, and premises, or any of them, or any part thereof, *To hold* the same (subject to the security made, or intended to be made, by the said lastly hereinbefore-recited indenture of even date with these presents), unto the said [*second mortgagee*], his executors, administrators, and assigns, for the term of one thousand years, without impeachment of waste, subject to a proviso or condition, and covenant or agreement, in the said indenture now in recital contained, for redemption of the same premises, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*second mortgagee*], his executors, administrators, or assigns, of the sum of 9620*l.*, with interest for the same, to be computed from the first day of January then and now last past, after the rate of 5*l.* for 100*l.* by the year, on or at the days or times, and in the manner in the said indenture now in recital mentioned or appointed for the payment thereof respectively. NOW THIS INDENTURE WITNESSETH, that in pursuance and further performance of the said agreement so entered into by and between or amongst the said [*mortgagor*], [*first mortgagees*], and [*second mortgagee*], as hereinbefore is mentioned, and in consideration of the premises, and for and in consideration of the sum of 10*l.* a piece of lawful money of Great Britain, to the said [*trustee of the legal estate*] and [*mortgagor*], paid by the said [*trustees for the mortgagees*], at, the receipt, &c., HE, the said [*trustee of the legal estate*], at the request and by the direction of the said [*mortgagor*], and upon the nomination of the said [*first mortgagees*] and [*second mortgagee*], (testified by their respectively being parties to, and sealing and delivering these presents), and as to such of the premises only as are of the nature of freehold or real estate, *Hath* bargained, sold, and released, *And* by these presents *Doth* bargain, sell, and release, *And* the said [*mortgagor*], at the request, and by the direction, and upon the nomi-

Witnessing part.

The trustee of the legal estate and the mortgagor convey the freehold premises, and the mortgagor assigns the personal chattels unto the trustees for the mortgagees, upon the trusts after mentioned, but without prejudice to the mortgages made by the indentures of even date.

OF AN ESTATE IN JAMAICA.

nation and appointment of the said [*first mortgagees*] and [*second mortgagee*] (testified as hereinbefore is mentioned), and as to all and singular the premises, *Hath* granted, bargained, sold, released, assigned, ratified, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, assign, ratify, and confirm, unto the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, respectively, according to the nature and quality of the same premises respectively, the said plantations, lands, tenements, hereditaments, negroes, cattle, stock, and all other the premises comprised in, and granted, released, and assigned respectively by the said firstly hereinbefore-recited indenture of even date with these presents, or mentioned or intended so to be, with their respective appurtenances, *All* such part of the said premises as are of the nature of freehold or of real estate, being now in the actual possession of the [*trustees for the mortgagees*], by virtue of a bargain and sale to them thereof made, &c. (*usual reference to a lease for a year*); *And* all the said negroes and other slaves hereby released or intended so, being particularly mentioned or described in the schedule (*d*) hereunder written or hereunto annexed; (*e*) *And* the reversion, &c.; *And* all the estate, &c.; To HAVE AND TO HOLD all such, and so many, and such part and parts of the premises hereinbefore mentioned to be hereby released and assigned, as are of the nature of freehold or real estate (subject to the said terms of five hundred years and one thousand years, and to the payment of the money thereby respectively secured or

---

(*d*) By a local act, a lease for a year is rendered unnecessary in the island of Jamaica. The lease is often had by persons who are not aware of this act, but it is a useless expense.

(*e*) By the acts 59 Geo. III. c. 120, and 5 Geo. IV. c. 113, it is provided, that no mortgage or other conveyance of slaves shall be valid, unless the registered names and descriptions of the slaves shall be set forth in the deed of mortgage or conveyance, or in a schedule indorsed thereon or annexed thereto, according to the latest registration of such slaves in the office of Registrar of Slaves. The provisions of these acts, and the laws relating to slaves as property, and to conveyances of them, will be fully considered under the title PURCHASE-DEEDS, in the next volume.

intended so to be), unto the said [*trustees for the mortgagees*], their heirs and assigns, To the use of them, the said [*trustees for the mortgagees*], their heirs and assigns, for ever, *But*, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same, AND TO HAVE AND TO HOLD all such, and so many, and such part and parts of the premises hereinbefore mentioned to be hereby released and assigned respectively, as are of the nature of personal estate (subject to the securities made, or intended to be made, by the said indenture of even date with these presents respectively, as hereinbefore is mentioned), unto the said [*trustees for the mortgagees*], their executors, administrators, and assigns, *But*, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same; (*Covenant from the trustees of the legal estate with the trustees for the mortgagees that he has done no act to incumber*); AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties to these presents, that the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, shall stand and be seised and possessed of and interested in all and singular the said plantations, hereditaments, and premises hereby granted, released, and assigned respectively, or expressed or intended so to be, with their respective appurtenances, *Upon* and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, hereinafter expressed and declared of and concerning the same (that is to say), *Upon trust* that they, the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns, of such survivor, *Do* and shall, during the term of five years, to be computed from the said first day of January now last past, and thenceforth next ensuing, by means of an agent or agents in the said Island of Jamaica, to be appointed for that purpose, as hereinafter is mentioned, manage, cultivate, maintain, stock, and keep up the said plantations, here-

Declaration that the trustees for the mortgagee shall stand possessed of the plantations, &c., upon the trusts after mentioned, viz.

Upon trust for the term of five years, to manage and cultivate the plantations in such manner as they shall think fit;

OF AN ESTATE IN JAMAICA.

ditaments, and premises, in such manner as in their discretion and opinion respectively will most conduce to the advantage thereof, *And*, in order thereto, *Do* and shall, by the means aforesaid, at their or his discretion, make or cause to be made any improvements, repairs, or alterations of any nature or kind whatsoever, in or on the same premises, or any part or parts thereof, and purchase any negroes, slaves, cattle, horses, mules, stores, plantation tools, implements, utensils, live and dead stock, or any other article or thing whatsoever, for the use of the said plantations, hereditaments, and premises, or any of them, *And* do and shall buy provisions and other necessaries for such negroes, slaves, cattle, horses, mules, and other live stock, as are or shall, from time to time, be in, or upon, or belonging to the said plantations, hereditaments, and premises, *And* do and shall sell, or cause to be sold, *All* or any of such negroes, slaves, cattle, and stock, *And* do and shall receive and pay any sum or sums of money upon or in consequence of any sale or sales, purchase or purchases, of any negroes, slaves, cattle, and live or dead stock, that are or shall be upon, or employed or intended for the use and benefit of the said plantations, hereditaments, and premises, or any of them or any part thereof, *And* also do and shall employ any overseers, servants, mechanics, workmen, and other persons whomsoever, in, or about, or in the care of the said plantations, hereditaments, and premises, or any of them, or any part thereof, *And* do and shall place and displace the person or persons so employed in such manner as to them, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns, of such survivor, or any agent or agents to be employed by them and under their authority in Jamaica, shall seem meet, and allow them such reasonable salaries or wages as they or he shall think fit, *And* do and shall cause all the sugars, rums and other goods, commodities, wares, merchandize, and produce, of what nature or kind soever, of the said several plantations, hereditaments, and premises, or any of them, or any part or parts thereof (except such part of the said rum as the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors,

And for that purpose to make improvements, repairs, andalterations, and purchase slaves, cattle, and other things necessary for the use of the plantations;

And sell slaves, cattle, and stock, and receive and pay any sums of money in consequence of any such sale or purchase;

And employ such persons in theplantations, and place and displace them, in such manner as they, the trustees or their agents, shall think proper;

And allow such salaries as they shall think fit;

And cause the produce of the plantations (except such part as they shall think fit to retain for payment of their expenses in the

administrators, or assigns of such survivor, shall think fit to retain towards payment of the contingencies in the said Island of Jamaica), to be shipped and consigned to the port of London, to be sold or disposed of by such person or persons as the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor shall direct, *And* do and shall cause the same to be insured in the usual way; AND IT IS HEREBY AGREED AND DECLARED, between and by the parties hereto, that it shall and may be lawful to and for the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, to do, perform, and execute, or cause to be done, performed, and executed, in and about the premises, all other acts, deeds, matters, and things whatsoever, which shall be necessary for the cultivation, management, and improvement thereof respectively, in such and the same manner, and as fully, to all intents and purposes, as if they, the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, respectively, were absolute and sole proprietors of all the said plantations, hereditaments, and premises; PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that it shall be lawful for the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, at any time during the said term of five years, with the consent in writing of the said [*first mortgagees*], or the survivor of them, or their or his heirs, executors, administrators, or assigns, respectively, to remove or displace from his or their employment any person or persons they shall nominate or appoint in Jamaica as agent or agents for the purposes aforesaid, and, with such consent as aforesaid, to appoint any other person or persons to be agent or agents for the purposes aforesaid, in the stead or place of the said agent or agents so removed or displaced, and from time to time, with such consent as aforesaid, such person or persons to place and displace at their or his discretion, and to allow to all such agent or agents for the time being such reasonable salary or salaries, commission

island) to be consigned to London, to be disposed of by such persons as the trustees shall direct;

Declaration that the trustees may do all other things necessary for cultivation and management of the plantations, as if they were the absolute proprietors thereof.

Proviso that it shall be lawful for the trustees, with the consent of the first mortgagees, to displace any agent appointed by them in Jamaica, and appoint others, and to allow such salaries or commission as is customary.

OF AN ESTATE IN JAMAICA.

Power of attorney from the mortgagor to the trustees;

or commissions, as is usual and customary in the said Island of Jamaica in similar cases; And, in pursuance and further performance of the said agreement, and for the considerations aforesaid, the said [*mortgagor*] *Hath* nominated, made, ordained, constituted, and appointed, *And* by these presents *Doth* nominate, make, ordain, constitute, and appoint, and in his place and stead put and depute, the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, his true and lawful attorneys and attorney, irrevocably, in the name of him, the said [*mortgagor*], or in the names or name of them, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, or otherwise, as they, or he, or any other person or persons to be appointed under them or him shall think most proper and convenient, (but upon and for the trusts, intents, and purposes hereinbefore or hereinafter specified), to ask, demand, sue for, levy, recover, and receive, of and from all and every the tenant and tenants of the premises hereby granted and released and assigned, as aforesaid, and of and from all and every other the person or persons whomsoever, liable, obliged, or intrusted to pay the same, *All* such rent and rents, and arrears of rent and rents, yearly, and other profits and produce, which now is, or are, or hereafter shall or may be, due and owing, accruing, renewing, or arising to the said [*mortgagor*], for or in respect of the said plantations, hereditaments, and premises hereinbefore granted and released, or intended so to be, or any of them, or any part or parts thereof, *And* also all and every the stocks, chattels, effects, and premises hereinbefore assigned, or intended so to be; *And*, upon receipt or delivery of the said rents, effects, and premises, or any part or parts thereof, in the name of the said [*mortgagor*], or in the names or name of the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, or otherwise, as they or he shall think proper, to make, give, sign, seal, and execute, all and every such good and sufficient receipts, acquittances, releases, and discharges in the

to receive the rents and produce of the plantations;

OF AN ESTATE IN JAMAICA.

law whatsoever, for the same, as they, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall think fit or expedient; *And*, in case of non-payment of all or any part or parts of the said rents, or the arrears thereof, or the non-delivery of all or any part of the said effects and things, *Then* in the name of him, the said [*mortgagor*], or in the names or name of the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, or otherwise, as they or he shall think fit, to enter and distrain for all or any part or parts of the said rents, or any arrears thereof, and the distress and distresses then and there found, to lead, drive, take, and carry away and impound, and the same in pound to keep, until the said rent, and the arrears thereof, and all costs and expenses incurred by such distress and distresses, shall be fully paid and satisfied, *And* in default of payment, in due time after such distress and distresses shall be so taken, to appraise and to sell or dispose of the same distress or distresses, or otherwise to act therein according to due course of law, and to commence, carry on, and prosecute one or more action or actions, suit or suits at law or in equity, attachments, or other proper proceedings, as to the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall seem requisite and necessary, to compel the payment or delivery of all or any of the said rents, effects, and things, or any part or parts thereof, *And* also to adjust, liquidate, and finally settle any account or accounts now open and depending or remaining unsettled between the said [*mortgagor*], and any person or persons whomsoever, interested in or claiming to be interested in the premises hereby respectively released and assigned, as aforesaid, or any of them, or any part or parts thereof, *And* to receive and pay such balance or balances, as the case shall happen to be, so as no payment shall be made to any such person or persons contrary to or in breach of the trusts hereby declared; *And*, in case of refusal of payment of all or any part or parts of any balance or balances that shall appear to be due or

and on non-payment or non-delivery to enter and distrain;

to commence and prosecute actions and suits;

to settle accounts;

OF AN ESTATE IN JAMAICA.

owing to the said [*mortgagor*], to compel the payment thereof by all or any of the ways and means aforesaid, *And* also for him, the said [*mortgagor*], and in his name, to appear and him to represent and personate in all courts and before all ministers, judges, and magistrates, both at law and in equity, as to the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns of such survivor, shall seem meet, and to sue, arrest, distrain, seize, sequester, imprison, and condemn the person or property of any person or persons indebted, or that shall or may hereafter be indebted, to the said [*mortgagor*], in or respecting the premises hereby respectively released and assigned as aforesaid, or any of them, or any part thereof, or that shall be liable for or compellable to pay, account for, or deliver, any of the premises hereby released and assigned, as aforesaid, or any of them, and such person and persons out of prison to release and discharge, as they, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns, of such survivor shall think fit; *And* also to compound, compromise, and submit to arbitration, conclude, and agree, any debt or debts, sum or sums of money, due or owing to the said [*mortgagor*], from any person or persons whomsoever, or any other claim or demand, dispute, difference, or controversy, subsisting or depending, or to arise between the said [*mortgagor*], and any person or persons whomsoever interested, or claiming to be interested, in the premises hereby respectively released and assigned, as aforesaid, *And* for that purpose for and on the behalf of the said [*mortgagor*], and in his name, or in the names or name of the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns, of such survivor, or otherwise, as they, the said [*trustees*], or the survivors or survivor of them, or the executors, administrators, or assigns, of such survivor, shall think fit to enter into, sign, seal, execute, and deliver, one or more bond or bonds of arbitration, or instrument or instruments of submission, and to stand to, obey, abide, and perform the said award, order, arbitrament, awards, orders, and arbitraments, of

to arrest persons indebted to the mortgagor;

to compound debts;

such arbitrator or arbitrators, as shall be thereby appointed, *And* to make, sign, seal, and execute, all and every other lawful acts, deeds, matters, and things, as may be thought needful or necessary for the receiving or recovering all or any of the said premises hereby released and assigned, respectively, as aforesaid, or any part or parcel thereof, or for the acquitting or discharging the same, or the person or persons from whom the same may be received or recovered, or who are or shall or may be liable to pay or account for the same; AND, for the better effectuating the purposes aforesaid, *He*, the said [*mortgagor*], *Doth* hereby authorize and empower the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the executors, administrators, or assigns, of such survivor, to make, constitute, depute, and appoint, one or more person or persons as a substitute or substitutes, in the place or stead of them, the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the executors, administrators, and assigns, of such survivor, with full power and authority to execute and perform all and every or any of the powers and authorities hereby created and given to them, as fully and effectually, to all intents and purposes whatsoever, as he, the said [*mortgagor*], or they, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the executors, administrators, or assigns, of such survivor, might or could do, if personally present at the doing thereof and acting therein, and such person or persons to displace and remove, and the powers or authorities given to him or them to revoke, and one other, or some others, in the place and stead of such person or persons so removed or displaced to appoint, and with the same, or any other power or powers, authority or authorities, to invest; AND he, the said [*mortgagor*], *Doth* hereby give and grant unto the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the executors, administrators, and assigns, of such survivor, and their or his substitute or substitutes, full power and authority to act in the premises, as fully and effectually, to all intents and purposes, as he, the said [*mortgagor*], could or might do, if personally present, and acting therein; *And* he, the said [*mortgagor*], *Doth*

and to do all other things necessary for receiving and recovering the premises;

with power to appoint substitutes with the same powers;

OF AN ESTATE IN JAMAICA.

hereby allow, ratify, and confirm, and covenant and agree to allow, ratify, and confirm, all and whatsoever the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the executors, administrators, or assigns, of such survivor, and their or his respective substitutes, shall lawfully do, or cause to be done, in or about the premises, by virtue of these presents; AND IT IS HEREBY AGREED AND DECLARED, that the receipts or receipt of the said [*trustees for the mortgagees*], and the survivors, &c. &c. (*Usual clause, making trustees' receipts sufficient discharges*); AND IT IS HEREBY AGREED AND DECLARED, that the said [*trustees for the mortgagees*], and the survivors and survivor of them, and the heirs, executors, administrators, or assigns, of such survivor, or the agent or agents, consignee or consignees, to be appointed by them or him, in Great Britain, do and shall, with and out of the monies which, during the said term of five years, shall come to their, or any of their hands or hand, by means of the rents, issues, profits, and produce of the said several plantations, hereditaments, and premises, or otherwise, under or by virtue of these presents, in the first place, pay and discharge the expenses attending the preparation and execution of these presents, and the several deeds and instruments connected therewith, *And* all and singular the taxes and assessments whatsoever, either already taxed, charged, or imposed, or hereafter to be taxed, charged, or imposed, upon the said plantations, hereditaments, and premises, or any of them, *And* all the costs and expenses of managing, improving, and superintending the same several plantations, hereditaments, and premises, and of putting and keeping in repair all and singular the messuages, boiling-houses, curing-houses, works, and erections whatsoever, in and upon the same plantations, hereditaments, and premises, or any of them, together with the costs and prices of all negroes, cattle, horses, plantation tools, implements, utensils, live and dead stock, for the use of the said plantations, lands, and estates, or any of them, *And* of all provisions and other necessaries for such negroes, cattle, horses, and other live stock, as from time to time shall be in, upon, or belonging to the said plantations or estates, or any of them, or any

Declaration, that the trustees shall, out of the monies which shall come to their hands by the means aforesaid, during the term of five years, in the first place, pay the expenses of preparing these presents, and the indentures of even date,

the taxes imposed on the plantations;

and all expenses incurred in the management of the plantations, &c.

part thereof, *And* all expenses attending the sale or disposition of any of the said cattle, live or dead stock, implements, and utensils, *And also* the reasonable salaries and allowances of all agents, overseers, workmen, or other persons whomsoever, to be employed for all or any of the purposes aforesaid, *And also* the ordinary commission on the sale of the sugar, rums, cottons, and other goods, commodities, and produce of the said plantations, which shall be shipped or consigned, as hereinbefore is mentioned, with the premiums and expenses to be paid for insuring such consignments and produce, together with the freight, and all other expenses attending the importation and sale thereof, and also the usual commission, freight, and other expenses, on all supplies whatsoever, which from time to time shall be purchased and sent from Europe, for the use or consumption or on the account of the said plantations or any of them, and the premiums and expenses to be paid for insuring the same, *And also* all and singular such losses, damages, charges, and expenses whatsoever, as they, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or their or his heirs, executors, administrators, or assigns, or their or his agents, servants, or managers, either in Great Britain or Jamaica, shall or may sustain, incur, or be put unto, in or about the management and improvement of the said plantations, hereditaments, and premises, or any of them, or any part thereof, or otherwise, in relation thereto, *And,* in the next place, pay and satisfy the interest which from time to time shall become due to the said [*first mortgagees*], their executors, administrators, and assigns, under or by virtue of the said firstly hereinbefore recited indenture, of even date with these presents, *And,* in the next place, pay and satisfy the interest which from time to time shall become due to the said [*second mortgagee*], his executors, administrators, and assigns, under or by virtue of the said thirdly hereinbefore in part recited indenture, of even date with these presents, *And,* in the next place, pay, or cause to be paid, to the said [*mortgagees*], his executors, administrators, or assigns, during the said term of five years, the clear yearly sum of

pounds, for the support of the said [*mortgagor*] and his family, *And* do and shall pay and apply the sur-

In the next place, pay the interest of the monies secured to the first mortgagees ;

then the interest of the monies secured to the second mortgagee ;

and, after answering the trusts aforesaid, to pay annual sum of *l.* to the mortgagor, his executors, &c. during the term

OF AN ESTATE IN JAMAICA.

of five years, for the support of himself and his family;

and to pay the surplus of the monies to the first mortgagees, towards payment of their debt, until the same shall be reduced to the sum of 9620*l.*, and then to pay the same between the first mortgagees and the second mortgage equally;

plus or residue of the monies which shall come to their or his hands or hand, during the said term of five years, under or by virtue of these presents, after answering and satisfying the several trusts and purposes aforesaid, in manner hereinafter mentioned (that is to say), unto the said [*first mortgagees*], their executors, administrators, or assigns, towards payment and satisfaction of the principal money due and owing to them on the security of the said firstly hereinbefore-recited indenture of even date with these presents, as aforesaid, until the amount of the same principal money shall be reduced to the sum of 9620*l.* of lawful money of Great Britain; *And*, after the said principal money shall be so reduced to that sum, *Then*, as to one moiety of the said surplus monies unto the said [*first mortgagees*], their executors, administrators, or assigns, in further reduction of the principal money secured to them, as aforesaid, *And*, as to the other moiety of the said surplus monies, unto the said [*second mortgagee*], his executors, administrators, or assigns, in or towards payment or satisfaction of the principal money secured, or intended to be secured, by the said thirdly hereinbefore in part recited indenture of even date with these presents, *And* from and after full payment and satisfaction of the said principal monies and interest secured to the said [*first mortgagees*] and [*second mortgagee*], their respective executors, administrators, and assigns, as aforesaid, *Do* and shall pay the said surplus or residue unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, for his and their own use and benefit; *And*, subject to the trusts hereinbefore declared, *Do* and shall stand and be seised and possessed of the said plantations, hereditaments, and premises, hereinbefore respectively granted, and released and assigned, or intended so to be, and their appurtenances, *In trust* for the said [*mortgagor*], his heirs, executors, administrators, and assigns, respectively; PROVIDED ALSO, AND IT IS HEREBY FURTHER AGREED AND DECLARED, between and by the parties hereto, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall be minded or desirous to pay off and discharge the respective debts due and owing from him or them to the said [*first mortgagees*], their heirs, executors, administrators, and assigns, and the said [*second*

and, after both mortgagees are paid, then to the mortgagor;

and, subject to the trusts before declared, stand seised of the plantations, in trust for the mortgagor.

Proviso, for enabling the mortgagor to pay off the monies secured, and determine the trusts declared by these presents, before the expiration of the term of five years.

*mortgagee*], his executors, administrators, and assigns, and to put an end to and absolutely determine the trusts declared by these presents, at any time before the expiration of the said term of five years, from the 1st day of January now last past, and of such his, her, or their mind or desire shall give, or cause to be given, notice in writing to the said [*trustees for the mortgagees*], their executors, administrators, or assigns, and shall, at or before the expiration of twelve calendar months, from the time of giving such notice, pay, or cause to be paid, to the said [*first mortgagees*], their executors, administrators, or assigns, *All* and every the principal monies and interest due and owing upon the security of the said firstly hereinbefore-recited indenture of even date with these presents, *And* also pay, or cause to be paid, unto the said [*second mortgagee*], his executors, administrators, or assigns, all and every sums and sum of money due and owing to him or them, under or by virtue of the said thirdly hereinbefore-recited indenture of even date with these presents, and pay, discharge, and satisfy, or cause to be paid, discharged, and satisfied, all the costs, charges, and expenses whatsoever, which the said [*trustee for the mortgagees*], their heirs, executors, administrators, or assigns, or any of them, or any agent or agents to be employed by them, or any of them, shall or may have incurred, or been put unto, in or about the execution of the trusts declared by these presents; *Then* and in such case they, the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, respectively, shall and will, immediately on the expiration of twelve calendar months, from the time of giving such notice as aforesaid, and on such payments being respectively so made by the said [*mortgagor*], his heirs, executors, administrators, or assigns, as hereinbefore is mentioned, at the request and costs and charges in the law of the said [*mortgagor*], his heirs, executors, administrators, or assigns, re-convey, re-assign, and re-assure, respectively, *All* and singular the said plantations, hereditaments, and premises, hereby released and assigned, respectively, or intended so to be, with their appurtenances, unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, respectively, according to the

OF AN ESTATE IN JAMAICA.

nature and quality of the same premises respectively, or as he or they shall direct or appoint, freed and discharged from the trusts, powers, provisoes, declarations, and agreements in and by these presents expressed, declared, and contained, of and concerning the same, so as for the doing thereof the said [*trustees for the mortgagees*], their heirs, executors, administrators, or assigns, or any of them, be not compelled or compellable to go or travel from the place or places of their or any of their usual abode or dwelling. (*Power of sale at twelve months' notice from either of the mortgagees, in the event of the monies secured remaining unpaid at the end of the five years.*)

Proviso, that if the debt secured to the first mortgagees shall be paid within five years, and interest in the meantime be paid half yearly, they will not take possession during the term of five years, or foreclose the equity of redemption, or otherwise enforce payment.

PROVIDED ALWAYS, AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that if the principal monies secured by the said firstly hereinbefore-recited indenture, of even date with these presents, shall be paid at any time during the said term of five years, and the interest thereon shall in the meantime be duly paid by equal half-yearly payments, on the day of , and the day of , in every year, or within one month after the same days or times respectively, *Then*, and in such case, they, the said [*mortgagees*], shall not nor will, during the said term of five years, take possession of the said plantations, hereditaments, and premises, under or by virtue of the judgment to be entered up in pursuance of the warrant of attorney executed by the said [A. B.], [N. O.], and [P. Q.], and the said [*mortgagor*], as hereinbefore is mentioned, or foreclose the equity of redemption of the said mortgaged premises assigned to them, the said [*first mortgagees*], their executors, administrators, and assigns, by the said [V. W.], in manner aforesaid, or commence or institute any action or suit, or make, do, or execute, or cause to be made, done, or executed, any other act, deed, matter, or thing whatsoever, under or by virtue of the said firstly hereinbefore-recited indenture, of even date with these presents, for compelling and enforcing the payments of the principal monies and interest, by the same indenture secured to them, from the said [*mortgagor*], his heirs, executors, administrators, and assigns, as aforesaid, or any part thereof respectively. (*Similar provision as to*

*the second mortgagee, except as to taking possession under the warrant of attorney.*) PROVIDED ALSO, AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that if the principal monies and interest secured by the said firstly hereinbefore-recited indenture of even date with these presents, shall not be paid on or at the days or times mentioned and appointed for the payment thereof in the proviso or agreement lastly hereinbefore contained, *Then*, and in such case, they, the said [*first mortgagees*], their executors, administrators, or assigns, shall not by these presents, or any clause, matter, or thing herein contained, be in anywise prevented or hindered from obtaining the possession of the said plantations, hereditaments, and premises, under or by virtue of the said judgment in ejectment, or from foreclosing the equity of redemption in the said mortgaged premises, or from commencing or instituting any action or suit at law or in equity, or from doing or executing any other act, deed, matter, or thing whatsoever, under or by virtue of the said firstly hereinbefore-recited indenture, of even date with these presents, for compelling and enforcing the payment of the principal monies and interest by the same indenture secured to them, from the said [*mortgagor*], his executors, administrators, or assigns, as aforesaid, or any part thereof respectively; (*nearly similar proviso as to the second mortgagee*); AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, in manner following: (that is to say), *That* he, the said [*mortgagor*], hath not at any time heretofore made, done, &c. any act, &c. whereby he is prevented or hindered from conveying, releasing, and assigning the said several plantations, hereditaments, and premises hereby granted and released and assigned respectively, or intended so to be, and their appurtenances, unto and to the use of the said [*trustees for the mortgagees*], their heirs, executors, administrators, and assigns, upon the trusts and in the manner aforesaid, and according to the true intent and meaning of these presents;

Proviso, that if the debt and interest due to the first mortgagees shall not be paid, as before mentioned, they shall not be prevented from taking possession, foreclosing the equity of redemption, or otherwise enforcing payment.

Covenant by the mortgagor that he has done no act to incumber;

OF AN ESTATE IN JAMAICA.

and that he will not obstruct the trustees in the execution of the trusts, or revoke the powers given to them;

*And* that he, the said [*mortgagor*], his heirs, executors, or administrators, shall not nor will do, commit, or suffer, any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall or may be in anywise obstructed or hindered in the execution of the trusts hereby reposed in them or him, or revoke or make void the powers or authorities hereby granted to them and him, but that, on the contrary, he, the said [*mortgagor*], his heirs, executors, and administrators, shall and will, upon every reasonable request to be made to him or them for that purpose, do, perform, and execute all such further and other lawful and reasonable acts, matters, and things whatsoever, which they, the said [*trustees for the mortgagees*], or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall advise or require to be done, for the better enabling them or him to carry into

and for further assurance.

execution the trusts hereinbefore declared; *And, further,* that he, the said [*mortgagor*], his heirs, executors, and administrators, and all and every other persons and [person whosoever, having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest, either at law or in epuity, in, to, or out of the said plantations, hereditaments, and premises hereby granted, released, and assigned respectively, or intended so to be, or any of them, or any part thereof, shall and will, from time

Power to appoint new trustees.

to time, &c. (*do all acts for further assurance*). PROVIDED ALWAYS, AND IT IS HEREBY AGREED, &c. (*Power to the trustees or trustee for the time being, with the consent in writing of the first mortgagees, their executors, administrators, or assigns, to appoint new trustees*). AND to the intent that these presents (*f*) may be duly acknowledged, recorded, and registered, and take effect

---

(*f*) The power of attorney to acknowledge the deed in the West Indies, for the purpose of being registered, may be, as in this case, included in the deed, or taken by a separate instrument. The former is the most usual mode.

according to the laws, usage, and custom of the said Island of Jamaica, and for the other purposes hereinafter mentioned, the said several persons, &c. &c. (*Power of attorney to register the deeds in Jamaica, see* Vol. II. p. 244, *omitting the clause respecting the schedule* (*g*). IN WITNESS, &c.

*(Here add a schedule of the slaves.)*

---

(*g*) The following affidavit of execution by one of the witnesses to a mortgage-deed, and of the Lord Mayor's certificate of his acknowledgment of such execution, and of the affidavit sworn before him by one of the witnesses to the execution of the deed, may be useful:—

AFFIDAVIT *of* EXECUTION *of a* MORTGAGE *of an Estate in Jamaica by a Mortgagor, by one of the attesting Witnesses to such Execution.*

London } [J. P.], of, &c. gentleman, being duly sworn
to wit. } upon the Holy Evangelists, maketh oath and saith, that he, this deponent, was present and did see [*mortgagor*], formerly of the city and parish of Kingston, in the county of Surrey and Island of Jamaica, but now of Richmond, in the county of Surrey, in England, merchant, a party to the indenture hereunto annexed, bearing date the day of this instant , and made, or expressed to be made, between, &c. sign, seal, and as his act and deed deliver, the same indenture; *And* this deponent further saith, that he did also see the said [*mortgagor*] sign the receipt indorsed upon the said indenture, and that the name "[*mortgagor*]" set to the said indenture, and also to the said receipt, is the proper handwriting of the said [*mortgagor*]; *And* that the name "[J. P.]" subscribed as a witness to the execution of the said indenture, is the proper handwriting of this deponent.

(Signed) [J. P.]

Sworn at the Mansion House, }
this day of , 18 , }
before me [ ], Mayor. }

OF AN ESTATE IN JAMAICA.

*Certificate of the* LORD MAYOR, *of a* MORTGAGOR *having executed the Mortgage, and of an Affidavit of the Execution by one of the attesting Witnesses.*

Lord Mayor's certificate.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, [ ], Lord Mayor of the City of London, do hereby certify, that, on the day of the date hereof, personally came and appeared before me, [*mortgagor*], a party to the annexed indenture, and acknowledged that he signed, sealed, and as his act and deed duly delivered, the annexed indenture; *And* the said [*mortgagor*] also acknowledged that he signed the receipt thereon indorsed, for the consideration-money of the annexed indenture; *And* I, the said Lord Mayor, do hereby further certify, that on the same day, also, came and appeared before me, [J. P.], the deponent named in the affidavit hereunto annexed, being a person well known and worthy of good credit, and by solemn oath, which the said deponent then took before me, upon the Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true the several matters and things mentioned and contained in the annexed affidavit.

In faith and testimony whereof, I, the said Lord Mayor, have caused the seal of the office of mayoralty to be hereunto put and affixed, and the indenture mentioned or referred to in and by the said affidavit to be hereunto also annexed. DATED in London, this day of , 18 .

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

### CONVEYANCE, *by way of Mortgage, by a* HUSBAND *and* WIFE, *of the* EQUITY *of* REDEMPTION *of an Estate in Fee, Mortgaged by the Wife's Father in his life-time.* (*a*)

THIS INDENTURE, made the day of , Parties.
BETWEEN [*husband*], of, &c., gentleman, and [ ], his wife (late [ ], spinster), of the one part, and [*mortgagee*], of, &c., of the other part:

---

(*a*) Mortgages of equities of redemption, or, as they are usually called, second mortgages, are open to two serious objections. The first is, that a third mortgagee, without notice of the second mortgage at the time of advancing his money, may obtain priority of payment over the second mortgagee, by afterwards paying off the first mortgage and taking a transfer of that security, and thus, to use a well-known professional expression, *squeeze out* the second mortgagee. The second objection is, that the second mortgagee may have great difficulty in recovering payment of his money, and even of the interest, as he has no *legal* remedy for either of them upon the estate, but is driven to the tedious and expensive process of a suit in equity for the purpose of foreclosing the right of redemption, and even then cannot make the security available for payment of the principal and interest, without first paying off the prior mortgagee. The same objections also apply to a third or fourth mortgage, in reference to any subsequent mortgage of the same premises. To obviate the first difficulty as far as practicable, every means should be taken to prevent the mortgagor from making a subsequent mortgage without notice of the second mortgage, and for this purpose it is usual to require a memorandum of the second mortgage to be indorsed on the first mortgage-deed; and on some of the principal conveyances under which the mortgagor derives his title, and as most prudent persons intending to be subsequent incumbrancers would require an inspection of the title-deeds, these memorandums would be effectual as notice, but it should nevertheless be remembered that there are many cases in which

Objections to mortgages of equities of redemption, or second mortgages.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

Recites the mortgage in fee;

WHEREAS, by indentures of lease and release, bearing date respectively the and days of , the release being made, or expressed to be made, between [*wife's father*], of, &c., esq., of the one part, and [X. Y.], of, &c., of the other part, *All that* close, &c. [*parcels*], and their appurtenances, were (in consideration of the sum of 2000*l.* by the said [X. Y.] to the said [*wife's father*] paid, as in the said indenture of release is mentioned) conveyed and assured by the said [*wife's father*] unto and to the use of the said [X. Y.], his heirs and assigns, for ever, for securing to the said [X. Y.], his executors, administrators, and assigns, by way of mortgage, the sum of pounds and interest, at the time and in the manner in the said indenture of release mentioned; AND WHEREAS the said [*wife's father*] did, in such manner as the law requires for rendering valid devises of freehold estates, duly sign and publish his last will and testament

the will of the mortgagor devising the equity of redemption to his daughter;

---

persons may become subsequent mortgagees without any inspection of the title-deeds or other notice of the prior mortgages on the estate; as where the subsequent mortgage is made for securing a debt already owing, or where the mortgagor in a mortgage of another estate introduces general words which would include the estate comprised in the second mortgage. The second objection is in a great degree removed by the modern practice of inserting in the second and subsequent mortgages powers of sale, with directions to apply the money arising from the sale in discharge of the mortgages in the order of their creation. The ground upon which a third mortgagee, taking a transfer of a first mortgage, without notice, at the time he lent his money, of the second mortgage, may squeeze out the second mortgagee, is simply this: that it is a rule of equity, that where the equities are equal the legal estate shall prevail. The third mortgagee has an equal equity with the second mortgage, and by taking a transfer of the first mortgage he acquires the legal estate, and, consequently, is entitled to the payment of the money due on both the first and third mortgages, to the prejudice of the second mortgagee. It seems proper, also, to add here, that on account of the danger attending a second mortgage, the courts of equity will not consider a loan by trustees on a second mortgage a proper investment, under the usual clause in settlements and wills authorizing the laying out and investment of the trust-funds on real security, and will consider the money so laid out to be uninvested, and call upon the trustees, on the application of the *cestui que trusts*, to bring the money into court.

Trustees are not allowed to lend on second mortgages.

in writing, bearing date on or about the day of , and did thereby give and devise the said closes, or pieces or parcels of land or ground, hereditaments, and premises, comprised in and conveyed by the said hereinbefore-recited indenture, as aforesaid, and their appurtenances, unto his daughter, the said [ ], the wife of the said [*husband*], (by her then name of [ ]), her heirs and assigns for ever, but subject nevertheless to the payment of the said sum of 2000*l.* secured thereon by the said hereinbefore-recited indentures, as aforesaid, and of the interest which might be due thereon at the time of his, the said testator's, death, *And* also subject to the payment to [E. F.] of , spinster, the sister of the said [ ], the wife of the said [*husband*], of an annuity or yearly sum of pounds, during her life; *And* the said testator did, by his said will, give and bequeath the residue of his real estate, and all his personal estate and effects, which should remain after payment of his funeral and testamentary expenses, and of all his just debts, except the said debt or sum of 2000*l.* secured by the said hereinbefore-recited indentures, as aforesaid, and the interest thereof, unto his friends [L. M.] and [N. O.], therein respectively described, their heirs, executors, administrators, and assigns, upon certain trusts therein declared, for the benefit of the said [E. F.] and any children or child she might thereafter have; *And* the said testator appointed [ ] and [ ] executors of his said will; AND WHEREAS the said [*wife's father*] departed this life on or about, &c. (*without revoking his will, and probate of the will, as ante,* p. 448); AND WHEREAS there is now due and owing, on the security of the said hereinbefore-recited indentures, the said principal sum of 2000*l.*, and a sum of pounds, for or in respect of interest thereon up to the present time; AND WHEREAS the said [*husband*], having occasion for the sum of 1000*l.*, hath applied to the said [*mortgagee*] to lend him the same, which he, the said [*mortgagee*], hath agreed to do upon having the repayment thereof, with interest, secured as hereinafter is mentioned; AND WHEREAS the said [ ], the wife of the said [*husband*], hath

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

the death of testator and probate of his will;

the agreement by the mortgagee to lend;

and the agreement by the wife to join in levying a fine.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

agreed, at his request, to join with him in levying a fine (*b*) of the said closes or pieces or parcels of land, hereditaments,

As to mortgage of wife's estate for the debt of the husband.

(*b*) When an estate belonging to a wife is mortgaged to raise money for the husband, or to pay any of his debts, and there is no evidence of an intention on the part of the wife to make an absolute disposition of the estate in favour of the husband, a court of equity will consider the wife merely as a surety, and will hold the wife entitled to have her estate exonerated out of the husband's assets, so far as they may be sufficient. *Tate* v. *Austen*, 1 P. Wms. 264, 2 Bro. 659; see also 1 Vern. 41, 2 Vern. 604, 3 Atk. 384. *Clinton* v. *Hooper*, 1 Ves. jun. 189. *Astley* v. *Tunkerville*, 2 Bro. C. C. 545, 1 Cox, 82. *Kinnoul* v. *Money*, 3 Swanst. 217, *a*. In the late case of *Aguilar* v. *Aguilar*, 5 Madd. 414, where the wife joined her husband in granting an annuity, charging the same on her separate estate, and also on a fund to which the husband was entitled *jure mariti*, it was held, that the wife was entitled to have the last-mentioned fund applied in payment of the annuity and in exoneration of her separate property. See likewise *Pitt* v. *Pitt*, 1 Turn. 180.

It is, however, to be observed, that if the money raised is raised to pay off a debt contracted by the wife before her marriage, or to discharge a mortgage to which her estate was subject at the time her right to the estate accrued, in these and similar cases there is no equity to throw the debt on the husband; and even where lands which descended to a wife subject to a mortgage were transferred to another party, who advanced money to pay off the mortgage, and took a transfer of the security, and the husband covenanted with the assignee to pay the money, it was held, that as the debt was not the husband's, his personal estate was not liable to the payment of it so as to exonerate the wife's estate, and that the covenant to pay was merely to be regarded as an additional security, and as entered into for the satisfaction of the lender, and was not to be considered as changing the nature of the debt. *Bagot* v. *Oughton*, 1 P. Wms. 347, 14 Ves. 417, 1 B. C. C. 454, Amb. 173.

The mere reservation of the equity of redemption to the husband will not change the wife's intent.

When the mortgage-deed contains no limitations of the estate beyond the security, and reserves the equity of redemption to the husband alone, in that case the wife's original sole interest will be preserved to her, upon the principle, that she, being the sole owner of the estate, the *mere form* of the reservation of the equity of redemption is insufficient of itself to alter the prior title to the property, for the circumstance of the reservation having been made otherwise than to the owner of the estate (that is, the wife) is, by a court of equity, presumed to have originated either in the *mistake* of the person who prepared the deed, or in his *ignorance*; and in either case the party prejudiced is entitled to relief. *Broad* v. *Broad*, 2 Cha. Ca. 98, 161. *Smallson* v. *Parker*, Amb. 687. *Ruscombe* v. *Hare*, 6 Dow. p. 1.

and premises, and their appurtenances, for the purpose of making and perfecting the said intended security; *And* hath also agreed, at his request, to join in limiting the equity of redemption of the same closes or pieces or parcels of land or ground, hereditaments, and premises, and their appurtenances, to the use of the survivor of them, the said [*husband*] and [ ], his wife, his or her heirs and assigns for ever, and in giving or granting the power of sale and other powers hereinafter contained: NOW THIS INDENTURE WITNESSETH, that, in pursuance and part performance of the said agreement, and in consideration of the sum of 1000*l.* of lawful money of Great Britain and Ireland, by the said [*mortgagee*], to the said [*husband*], with the privity and approbation of the said [ ], his wife, in hand well and truly paid, at or immediately before the sealing and delivery of these presents (the receipt and payment of which said sum of 1000*l.* the said [*husband*] and [ ], his wife, do hereby admit and acknowledge, and of and from the same and every part thereof, do hereby acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns), THEY, the said [*husband*] and

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

Witnessing part.

The husband and wife, in consideration of 1000*l.*, paid by the mortgagee, convey to the mortgagee and his heirs.

---

*Innes* v. *Jackson*, 16 Ves. 356, 1 Bligh, 104. *Huntingdon* v. *Huntingdon*, 2 Vern. 437. In order to change the right of redemption, and vest it in the husband instead of the wife, it is necessary that such an intention should be clearly expressed by a recital to that effect, or by limiting the equity, in the proviso for redemption, in such a manner as to preclude all doubt as to the meaning of the parties. The law on this subject is fully stated in *Innes* v. *Jackson*, 1 Bligh, 104. The same principle has also been thought to extend to the case of a married woman joining her husband in a mortgage of *his* estate in order to bar her dower; and in many instances where a fine has been levied on a mortgage transaction to bar a wife's dower, another fine has, on a subsequent sale or second mortgage, been required to bar the supposed right of the wife in the estate, under the proviso contained in the first mortgage, that on payment of the money secured the estate shall be reconveyed to the husband in fee, in which case the right to dower would be revived. This practice, however, is very improper, and has occasioned much unnecessary expense, as the dower, being extinguished at law, is not liable to be revived, nor to be considered as subsisting in equity. See *Harrington's case*, 13 Vin. Ab. 316, *pl.* 3. *Darcy* v. *Blake*, 2 Sch. & Lef. 388.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

[ ], his wife, *Have,* and each of them *Hath,* granted, bargained, sold, and released and confirmed, *And* by these presents *Do,* and each of them *Doth* grant, bargain, sell, release, and confirm, unto the said [*mortgagee*] (in his actual possession, &c. *(reference to lease for a year),* and his heirs, ALL THOSE, the said closes, or pieces or parcels of land or ground, hereditaments, and premises, hereinbefore described, and so comprised in and conveyed by the said hereinbefore-recited indentures, as aforesaid, and their, and every of their appurtenances; *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of the same closes or pieces or parcels of land, hereditaments, and premises, and their appurtenances, and of every part thereof; *And* all the estate, right, title, interest, inheritance, use, trust, property, claim, and demand whatsoever, both at law and in equity, of them, the said [*husband*], and [ ], his wife, and each of them, in, to, out of, or upon the same closes, or pieces or parcels of land, hereditaments, and premises, and every or any part thereof, TO HAVE AND TO HOLD the said closes, or pieces or parcels of land, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part thereof, with their and every of their appurtenances, unto the said [*mortgagee*], and his heirs, *To the use* of him, the said [*mortgagee*], his heirs and assigns, for ever; *But* subject, nevertheless, to the said mortgage so made to the said [X. Y.], his heirs, executors, administrators, and assigns, by the said hereinbefore-recited indenture, as aforesaid, and to the payment of the said principal monies and interest secured thereby, *And* also subject to the proviso or agreement for redemption hereinafter contained; AND, in pursuance and further performance of the said agreement, *And* for the consideration aforesaid, and for more effectually conveying and assuring the said closes, or pieces or parcels of land, hereditaments, and premises, hereinbefore granted and released, or intended so to be, and their appurtenances, *To the use* of the said [*mortgagee*], in manner and subject as aforesaid, HE, the said [*husband*], with the privity and approbation of the said [ ], his wife (testified by her being a party to and sealing and deli-

Parcels.

And the reversion, &c.;

and all the estate, &c.;

*Habendum,* unto and to the use of the mortgagor, his heirs and assigns, but subject to the said recited mortgage, and to the proviso for redemption hereinafter contained.

Covenant to levy a fine.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

vering these presents), *Doth* hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*mortgagee*], his heirs and assigns, that they, the said [*husband*], and [ ], his wife, shall and will, at the costs and charges of the said [*husband*], his heirs, executors, or administrators, as of term last, or in or as of term next, or some other subsequent term, when thereunto requested by the said [*mortgagee*], his heirs, executors, administrators, or assigns, acknowledge and levy, before his majesty's justices of the Court of Common Pleas, at Westminster, unto the said [*mortgagee*] and his heirs, one or more fine or fines, "*sur conuzance de droit come ceo*," &c.; whereupon proclamation shall be had and made, according to the form of the statute in that case made and provided, and the usual course of fines, for the assurance of lands and hereditaments, in like cases used and accustomed, of the said closes or pieces or parcels of land, hereditaments, and premises, hereinbefore granted and released, or intended so to be, with their and every of their appurtenances, by such names, quantities, qualities, and descriptions, as shall be sufficient to comprise and pass the same; AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that the said fine or fines, so to be acknowledged and levied as aforesaid, and all and every other fines and fine, conveyances and assurances whatever, of the same closes or pieces or parcels of land, hereditaments, and premises, and their appurtenances, shall operate and enure, and shall be adjudged, deemed, construed, and taken to operate and enure, *To the use* of the said [*mortgagee*], his heirs and assigns, for ever; *But* subject, nevertheless, to the said mortgage, &c. (as *ante*, p. 570), and to the proviso or agreement for redemption hereinafter contained; PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that, if the said [*husband*], and [ ], his wife, or either of them, or their or either of their heirs, executors, administrators, or assigns, shall and do, on the day of now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of 1000*l.* of lawful money of Great Britain

Proviso for redemption.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

and Ireland, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, without making any deduction or abatement out of the same sum and interest, or any part thereof, for or in respect of any present or future taxes, rates, charges, assessments, or impositions, or any other matter, cause, or thing whatsoever, *Then* and in such case he, the said [*mortgagee*], his heirs or assigns, shall and will, at the request and expense of the said [*husband*], and [ ], his wife, or the survivor of them, his or her heirs, executors, administrators, or assigns, reconvey the said closes or pieces or parcels of land, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, unto the said [*husband*], and [ ], his wife, and the survivor of them, and his or her heirs and assigns, for ever, as he, she, or they shall in that behalf order or direct, free from all incumbrances whatsoever made, done, or committed, by the said [*mortgagee*], his heirs or assigns, so as, for the doing thereof, he, the said [*mortgagee*], his heirs or assigns, be not compelled or compellable to go or travel from his or their usual place or places of abode or dwelling; AND the said [*husband*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*husband*], his heirs, executors, administrators, or assigns, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of 1000*l.* of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 5*l.* for 100*l.* by the year, to be computed from the day of the date of these presents, on or at the day or time mentioned in the aforesaid proviso or agreement for payment of the same, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents *(Proviso for quiet enjoyment until default, and power of sale)*. AND the said [*husband*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his heirs and assigns, in manner following

Covenant from the husband for payment of the principal and interest.

Usual covenants from the husband for title.

(that is to say), that they, the said [*husband*], and [ ], his wife, are, at the time of the sealing and delivery of these presents, lawfully and rightfully and equitably entitled to a good, sure, absolute, and indefeasible estate of inheritance in fee simple, in possession of and in the said closes or pieces or parcels of land or ground, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, without any condition, trust, &c. *(Usual covenants for title).* IN WITNESS, &c.

OF AN EQUITY OF REDEMPTION BY HUSBAND AND WIFE.

---

APPOINTMENT, *by way of* MORTGAGE, *by* HUSBAND *and* WIFE, *of an Estate limited To such uses as they should jointly appoint, with* POWER *of* SALE.—*(Very concise Form.)*

BY APPOINTMENT BY HUSBAND AND WIFE OF A MOIETY OF AN ESTATE.

**THIS INDENTURE**, made the day of , 1831, between [*husband*], of &c. and [*Maria*], his wife, of the one part; and [*mortgagee*], of, &c. of the other part: WHEREAS, under or by virtue of an indenture, bearing date the day of , and made, or expressed to be made, between [A. B.], therein described, and [*Jane*], his wife, of the first part; the said [*husband*], and [*Maria*], his wife, of the second part; and [C. D.], therein described, of the third part; and a fine, *sur conuzance de droit come ceo*, &c. duly acknowledged and levied by the said [A. B.], and [*Jane*], his wife, and the said [*husband*], and [*Maria*], his wife, unto the said [C. D.], and his heirs, in or as of Hilary Term now last past, pursuant to the covenant or agreement for that purpose in the said indenture contained, one equal undivided moiety, or half part or share, of and in *All those* two messuages or tenements, &c. *(Parcels) And* of all and singular other the hereditaments and premises (if any), situate and being in aforesaid, of or to which [E. F.], therein described, was seised, or entitled, at the time of his decease, with the

Parties.

Recites the conveyance of the premises to such uses as the husband and wife should appoint.

BY APPOINTMENT BY HUSBAND AND WIFE OF A MOIETY OF AN ESTATE.

appurtenances thereunto respectively belonging, now stand limited and assured To such uses, upon such trusts, with such powers, and in such manner, as the said [*husband*] and [*Maria*] his wife, shall at any time hereafter, during their joint lives, by any deed or writing, to be by both of them sealed and delivered, in the presence of and attested by two or more credible witnesses, direct, limit, or appoint, and, in default of and until such direction, limitation, or appointment, and subject thereto, to the uses in the said indenture mentioned or referred to, for the benefit of the said [*husband*] and [*Maria*] his wife, and their children; AND WHEREAS the said [*husband*], having occasion for the sum of 250*l.*, hath requested the said [*mortgagee*] to lend him the same, which he, the said [*mortgagee*], hath consented and agreed to do, upon having the repayment thereof, with interest thereon, at the rate of 5*l.* for 100*l.* by the year, secured by the covenant of the said [*husband*], hereinafter contained, and by an appointment in manner hereinafter mentioned of the said undivided moiety, hereditaments, and premises, which, under or by virtue of the said hereinbefore-recited indenture and fine, now stand limited to the uses hereinbefore mentioned or referred to, and their appurtenances. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the sum of 250*l.* of lawful money of Great Britain and Ireland, to the said [*husband*] paid, &c. (*as ante*, p. 569), HE, the said [*husband*], *Doth* hereby, &c. (*Covenant that he will pay to the mortgagee the sum of* 250*l. and interest, at the end of six months, see* p. 571, 572.) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, and in consideration of the said sum of 250*l.* so paid by the said [*mortgagee*] to the said [*husband*], as hereinbefore is mentioned, THEY, the said [*husband*] and [*Maria*], his wife, pursuant to and by force and virtue, and in exercise and execution, of the power or authority to them for this purpose given or limited, in and by the said hereinbefore-recited indenture and fine, as aforesaid, and of every or any other power or authority whatever, in anywise enabling them in this behalf, *Do*, by this present deed or

The agreement for the loan.

First witnessing part. The husband covenants with the mortgagee for payment of the principal and interest.

Second witnessing part. The husband and wife appoint the premises to the mortgagee, in fee, subject to a proviso for redemption.

writing, by both of them sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses, attesting the sealing and delivery of these presents by the said [*husband*] and [*Maria*], his wife, jointly direct, limit, and appoint, That the said undivided moiety, or half part or share, of and in the messuages or tenements, hereditaments, and premises hereinbefore mentioned and referred to, and their appurtenances, which, under or by virtue of the said hereinbefore-recited indenture and fine, now stand limited to such uses as the said [*husband*] and [*Maria*], his wife, shall jointly appoint, as aforesaid, shall, from and immediately after the execution of these presents, remain and be *To the use of* the said [*mortgagee*], his heirs and assigns, for ever, but subject nevertheless to the proviso or agreement for redemption hereinafter contained. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*husband*], his heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of 250*l.* and interest, so covenanted to be paid by him or them, as aforesaid, without any deduction or abatement out of the same, *Then* and in such case the said [*mortgagee*], his heirs or assigns, shall re-convey the said undivided moiety, hereditaments, and premises, hereby appointed and conveyed, or intended so to be, and their appurtenances, To the uses, upon the trusts, and with the powers limited, declared, and contained of and concerning the same, in and by the said hereinbefore-recited indenture, or such and so many of them as shall be then subsisting and capable of taking effect; PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties hereto, that in case the said sum of 250*l.* and interest, hereby secured, or any part thereof, shall not be paid conformably to the aforesaid proviso or agreement for payment of the same, it shall be lawful for the said [*mortgagee*], his heirs or assigns, at any time thereafter, on giving six calendar months' previous notice in writing of his or their intention so to do, to the said [*husband*] and [*Maria*], his wife, or the survivor of them, or the

BY APPOINTMENT BY HUSBAND AND WIFE OF A MOIETY OF AN ESTATE.

Proviso for redemption.

Power of sale to the mortgagee in case of default.

BY APPOINTMENT BY HUSBAND AND WIFE OF A MOIETY OF AN ESTATE.

executors or administrators of the said [*husband*], absolutely to sell and dispose of the said undivided moiety, hereditaments, and premises, and their appurtenances, either by public auction or private contract, as he or they shall think fit, and out of the monies arising thereby to retain and pay the said sum of 250*l.* and interest, or so much thereof as shall then remain owing, and shall pay the surplus or residue of the said monies, if any, to the person or persons, and in the manner, to whom or in which the said undivided moiety, hereditaments, and premises, hereby appointed and conveyed, or intended so to be, and their appurtenances, would or ought to be conveyed, under the proviso or agreement hereinbefore in that behalf contained, in case the said sum of 250*l.* and interest hereby secured had been paid at the time and in manner hereinbefore mentioned and appointed for payment thereof; AND IT IS HEREBY AGREED AND DECLARED, that the receipts of the said [*mortgagee*], his heirs or assigns, for the said monies, so to arise from such sale as aforesaid, shall be sufficient discharges for the same, *And* that no purchaser under the said power shall be at liberty to inquire in any manner into the necessity or propriety of the said sale or sales, or to require the concurrence of the said [*husband*] and [*Maria*], his wife, or any person claiming under him, them, or any of them; AND the said [*husband*] doth hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his heirs and assigns, in manner following (that is to say), that the power created by the said hereinbefore-recited indenture and fine, as aforesaid, and hereby exercised, is, at the time of the sealing and delivery of these presents, a good, valid, and subsisting power, and not exercised, released, extinguished, suspended, defeated, or avoided in any manner whatsoever, *And* that they, the said [*husband*] and [*Maria*], his wife, now have in themselves good right to appoint and convey the said undivided moiety, hereditaments, and premises, hereby appointed and conveyed, or intended so to be, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, *And* that it shall be lawful for

Covenant from the husband that the power of appointment is subsisting.

That mortgagee may enter after default;

BY APPOINTMENT BY HUSBAND AND WIFE OF A MOIETY OF AN ESTATE.

the said [*mortgagee*], his heirs or assigns, after default shall be made in payment of the said sum of 250*l.* and interest, or any part thereof, contrary to the proviso hereinbefore contained, peaceably to enter upon the said undivided moiety, hereditaments, and premises, and to hold and enjoy the same without any interruption, claim, or demand whatsoever, from or by the said [*husband* and [*Maria*], his wife, or any other person whomsoever; *And* that they, the said [*husband*] and [*Maria*], his wife, and all persons whomsoever, shall and will, upon every reasonable request of the said [*mortgagee*], his heirs, executors, administrators, and assigns, but at the costs and charges of the said [*husband*], his heirs, executors, or administrators, make and execute all such further appointments, conveyances, and assurances, for the better and more perfectly appointing, conveying, and assuring the said undivided moiety, hereditaments, and premises, and their appurtenances, unto and to the use of the said [*mortgagee*], his heirs and assigns, subject to the aforesaid proviso or condition, and all equity of redemption subsisting under or by virtue thereof, as by the said [*mortgagee*], his heirs or assigns, or his or their counsel in the law, shall be reasonably desired, or advised and required; PROVIDED NEVERTHELESS, and it is hereby agreed, that until default shall be made in payment of the said sum of 250*l.* and interest, or some part thereof, contrary to the proviso or condition hereinbefore contained, it shall be lawful for the said [*husband*] and [*Maria*], his wife, their appointees, heirs, or assigns, to occupy and enjoy, or receive and take, the rents and profits of the said undivided moiety, hereditaments, and premises, and their appurtenances, without any interruption or denial whatsoever, of, from, or by the said [*mortgagee*], his heirs or assigns, or any person claiming under him or them. IN WITNESS, &c.

and for further assurance.

Proviso that the husband and wife may enjoy till default.

OF A LIFE ASSURANCE POLICY.

ASSIGNMENT *of a* POLICY *of* ASSURANCE *on the* LIFE *of the* MORTGAGOR, *for securing, by way of Mortgage, the Sum of Pounds and Interest, with* POWER *of* SALE; *and* COVENANT *to pay the* PREMIUMS *on the* POLICY *during the continuance of the Security.* (*a*)

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part: WHEREAS, by a deed-poll or instrument in writing under the hands and seals of three of the directors of the Society for Equitable Assurances on Lives and Survivorships, London, bearing date the day of , and numbered , the stock and funds of the said society were (in consideration of the annual premium or sum of pounds,

Recites policy of assurance;

(*a*) A policy of assurance is generally an objectionable security, unless some ample and certain provision is at the same time made for securing the payment of the premium payable for keeping the policy on foot, and also of the interest on the money lent. In the present case, the policy had been effected for many years, and was nearly of sufficient value, if sold, to cover the amount of the money lent. On mortgaging a policy of assurance, great care should be taken that the office granting the policy has immediate and formal notice of the assignment by way of mortgage. This is more particularly necessary where the mortgagor is subject to the bankrupt laws, as, in the event of his becoming a bankrupt before notice of the assignment is given to the office, the policy and the monies assured thereby will be considered as property in the order and disposition of the bankrupt at the time of his bankruptcy, and as such vest in the assignees. *Ex parte Monroe*, 1 Buck. 300; *ex parte Usborne*, 1 Glyn. & Jam. 358; and *Williams* v. *Thorpe*, 2 Sim. 258.

OF A LIFE ASSURANCE POLICY.

paid and to be paid as therein is mentioned), made liable to the payment to the executors, administrators, or assigns of the said [*mortgagor*], within three calendar months next after the decease of the said [*mortgagor*] should be made known at the office of the said society, of the sum of pounds, and such other sum or sums of money as should become payable by way of bonus on the said policy, under or by virtue of the provisions and regulations expressed and contained in the deed of settlement whereby the said society was established; And whereas the said premium or yearly payment of pounds hath been duly paid, up to the day of now last past; And whereas the said [*mortgagor*], having occasion for the sum of pounds, hath applied to the said [*mortgagee*] to lend him the same, which he hath agreed to do on having the repayment thereof, with interest after the rate of 5*l.* for 100*l.* by the year, secured to him by an assignment by way of mortgage, in manner hereinafter mentioned, of the said hereinbefore-recited policy of assurance, and of the said sum of pounds, and other matters assured thereby, and all other benefits and advantages to be had or obtained under or by virtue of the same; *And* also by the covenants of the said [*mortgagor*], hereinafter respectively contained. Now this indenture witnesseth, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*mortgagee*] to the said [*mortgagor*] paid, at or before the sealing and delivery of these presents (*the receipt, &c. as ante*, p. 569), He, the said [*mortgagor*], *Doth* by these presents grant, bargain, sell, assign, transfer, and set over unto the said [*mortgagee*], his executors, administrators, and assigns, All that the said hereinbefore-recited policy of assurance, *And* the said sum of pounds assured thereby, *And* all other monies, benefits, and advantages whatsoever, to be had, recovered, or obtained under or by virtue of the same; *And* all the estate, right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him, the said [*mortgagor*], in, to, out of, or upon the same policy, monies, and premises,

and agreement to lend the money.

Witnessing part.

The mortgagor assigns the policy to the mortgagee, subject to redemption.

OF A LIFE ASSURANCE POLICY.

and every or any of them, To HAVE AND TO HOLD, receive and take, the said policy, monies, and all and singular other the premises hereby assigned, or intended so to be, and every of them, unto the said [*mortgagee*], his executors, administrators, and assigns absolutely; *But*, nevertheless, subject to the provisoes and with the power hereinafter respectively contained. (*Power of attorney to receive or recover the monies, &c. as ante*, p. 454.) PROVIDED ALWAYS, and it is hereby declared and agreed, by and between the said parties to these presents, that if the said [*mortgagor*], his executors, administrators, or assigns, or any of them, shall and do well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds, of lawful money of Great Britain and Ireland, on the day of , 1831; *And* shall and do, in the meantime, pay interest for the same sum after the rate of 5*l.* for 100*l.* by the year, by equal half-yearly portions, on the day of , and the day of , in each year, without any deduction or abatement out of the same, for or in respect of any matter, cause, or thing whatsoever; *Then* and in such case, and at any time thereafter, he, the said [*mortgagee*], his executors, administrators, or assigns, shall and will, at the request, and costs and charges, of the said [*mortgagor*], his executors, administrators, or assigns, re-assign the said policy, monies, and premises, hereby assigned or intended so to be, unto the said [*mortgagor*], his executors, administrators, and assigns, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*mortgagee*], his executors, administrators, or assigns, so as for the doing thereof he or they, or any of them, be not compelled or compellable to go or travel from the place or places of his or their, or any of their, usual abode or dwelling; PROVIDED ALWAYS, and it is hereby further agreed and declared, between and by the said parties hereto, that if default shall be made in payment of the said sum of pounds, or the interest thereof, or any part thereof respectively, contrary to the aforesaid proviso for payment of the same, and the true intent and meaning of these presents; *And* the said

Proviso, that if the mortgagor pays the principal money and interest at the time appointed, the mortgagee will resign the policy, free from incumbrances.

Power of sale to mortgagee, in case of default in payment of the money and interest.

OF A LIFE ASSURANCE POLICY.

[*mortgagee*], his executors, administrators, or assigns, shall at any time thereafter, by writing under his or their hand or hands, to be given to the said [*mortgagor*], his executors, administrators, or assigns, or left at his or their usual or last known place or places of abode in England, require the payment of the same, and the same shall not be paid for the space of six calendar months next after the same shall have been required to be paid, as aforesaid, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, at any time thereafter, absolutely to sell and dispose of the said policy, monies, and premises, hereby assigned, or intended so to be, and their appurtenances, or any part thereof, either by public auction or private contract, as he or they shall think fit, and for such price or prices as to him or them shall seem reasonable; *And*, for effectuating such sale or sales, to enter into and execute all such contracts, assignments, assurances, acts, deeds, or things, as to him or them shall seem expedient or proper; AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the receipt or receipts in writing of the said [*mortgagor*], his executors, &c. (as *ante*, p. 312); (*b*) *And* that no person or persons to or with whom any sale or sales, as aforesaid, shall be made, shall be obliged to inquire whether, &c. (as *ante*, p. 374.) (*Declaration of trust of the monies to arise by sale*); *And* the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of pounds of lawful money of Great Britain and Ireland, together with interest for the same, after the rate of 5*l.* for 100*l.*, to be computed

And, for effectuating such sale, to enter into contracts, &c.

Declaration that the mortgagee's receipts shall be sufficient discharges; and that no purchaser shall inquire into the propriety of a sale.

Covenant for payment of the principal and interest, and of the premium payable on the policy.

(*b*) Where there is no fund to secure the regular payment of the premium payable on the policy, it is prudent to make the policy saleable on non-payment of the premium within five or six days after it becomes due; and a power to raise money for payment of the premiums by a mortgage of the policy is sometimes inserted.

OF A LIFE ASSURANCE POLICY.

from the day of the date of these presents, on or at the days or times and in manner in the aforesaid proviso or agreement mentioned and appointed for payment of the same, without any deduction or abatement whatsoever, and according to the true intent and meaning of these presents; *And*, further, that while any monies shall remain due on the security of these presents, he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, into the office of the said Equitable Assurance Society, the premium which is payable for keeping the said hereinbefore-recited policy on foot, as and when the same shall become due and payable; *And* that, while any monies shall remain due on the security of these presents, he, the said [*mortgagor*], shall not nor will go upon the seas, or do any other act, deed, matter, or thing, whereby or by means whereof the said policy of assurance can, shall, or may become void or voidable; AND the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, further (*c*) COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following: (that is to say), that he, the said [*mortgagor*], now hath in himself good right, full power, and lawful and absolute authority to assign and assure the said policy, monies, and premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And* also that he, the said [*mortgagor*], shall not nor will, at any time or times hereafter, revoke, annul, or make void all or any of the power or authorities hereby given to the said [*mortgagee*], his executors, administrators, and assigns, or make, do, or execute, or knowingly or willingly permit or suffer, any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said [*mortgagee*], his executors, administra-

Covenants for title.

(*c*) The covenants for title might have followed the covenants for payment of the principal and interest, and of the premiums payable on the policy, without a fresh commencement of the covenants.

OF A LIFE ASSURANCE POLICY.

tors, or assigns, may, can, or shall be in anywise prevented or hindered from having, receiving, and taking the said policy, monies, and premises hereby assigned, or intended so to be, in manner aforesaid, according to the true intent and meaning of these presents; *And further*, that he, the said [*mortgagor*], his executors or administrators, and all persons claiming under him or them, shall and will, at any time or times hereafter, upon every reasonable request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors or administrators, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, assurances, matters, and things for the better and more effectually assigning, assuring, and confirming of the said policy, monies, and premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, and for enabling him and them to receive, recover, and enforce the payment of the said monies, in manner and for the purposes aforesaid, and according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required. IN WITNESS, &c.

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

## Mortgage *of* Renewable *Leaseholds for Lives.*

Parties.

Recital of the lease to [ ];

**THIS INDENTURE**, made the day of , 18 , Between [*mortgagor*], of, &c., of the one part; and [*mortgagee*], of, &c., of the other part: Whereas, by an indenture of lease (with livery of seisin indorsed thereon), bearing date on or about the day of , and made, or expressed to be made, between [*lessor*], of, &c., of the one part; and [*lessee*], of, &c., of the other part, *All those* two cottages or tenements called, &c., situate, &c., and also all those acres of land, &c. (*parcels*), *Together* with all ways, easements, common of pasture, privileges, and appurtenances to the same belonging, or therewith held, used, occupied, or enjoyed, were (for the considerations in the said indenture mentioned), demised and leased by the said [*lessor*] unto the said [*lessee*], his executors, administrators, and assigns, for and during the natural lives of [A. B.], of, &c., then of the age of thirty-one years, or thereabouts, [C. D.], of, &c., then of the age of years, or thereabouts, and [E. F.], of, &c., then of the age of years, or thereabouts, and the lives and life of the survivors and survivor of them, at and under the yearly rent of pounds, payable half-yearly, as therein is mentioned, and under and subject to the several covenants and agreements therein contained, on the part of the said [*lessee*], his executors, administrators, and assigns, to be observed and performed; And whereas, by an indenture of release, bearing date the day of , and made, &c. between the said [*lessee*], of the one part, and the said [*mortgagor*], of the other part, and grounded on a bargain and sale for a year, bearing date the next preceding day, the said

of the transfer of it to the mortgagor;

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

cottages, lands, hereditaments, and premises comprised in and demised by the said hereinbefore-recited indenture of lease, as aforesaid, and their appurtenances, were (for the considerations in the said indenture of release mentioned), conveyed by the said [*lessee*] unto and to the use of the said [*mortgagor*], his executors, administrators, and assigns, for and during the remainder of the lives and life of the said [A. B.], [C. D.], and [E. F.], and the survivors and survivor of them, at, under, and subject to the yearly rent, covenants, and agreements in and by the said therein and hereinbefore-recited indenture of lease respectively reserved and contained, on the lessee's or assignee's part to be paid, observed, and performed; AND WHEREAS the said [*mortgagor*], having occasion for the sum of pounds, hath applied to the said [*mortgagee*], &c., (*agreement to lend, as ante*, p. 597.)

and agreement to lend.

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the sum of pounds of lawful money of Great Britain and Ireland, by the said [*mortgagee*] to the said [*mortgagor*] in hand well and truly paid, &c. (the receipt, &c.), HE, the said [*mortgagor*], *hath* granted, bargained, sold, released, and confirmed, *And* by these presents *Doth* grant, bargain, sell, release, and confirm, unto the said [*mortgagee*], (in his actual possession, &c., *reference to a lease for a year*), and his heirs and assigns, ALL THOSE the said cottages or tenements, lands, hereditaments, and premises comprised in and demised by the said hereinbefore-recited indenture of lease, as aforesaid, and every of them, and every part and parcel of the same, with their and every of their appurtenances, *Together* with the same indenture of lease, and the said recited indentures of release and bargain and sale, and all other deeds, writings, and muniments of title relating to or in any wise concerning the same premises, now in the custody, possession, or power of the said [*mortgagor*], or which he can or may come by, procure, or obtain, without suit at law or in equity; *And* all the estate, right, title, interest, benefit, or tenant-right of renewal, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, out of, or upon the same cottages or tenements, lands, hereditaments, and premises,

Witnessing part.

The mortgagor, in consideration of *l.* conveys to the mortgagee

the premises comprised in the lease.

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

and every or any of them, and their appurtenances; To HAVE AND TO HOLD the said cottages or tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto and to the use of the said [*mortgagor*], his heirs and assigns, from henceforth, for and during all the residue and remainder of the lives of the said [A. B.], [C. D], and [E. F.], and the lives and life of the survivors and survivor of them, and in as full, large, ample, and beneficial a manner, to all intents and purposes whatsoever, as the said [*mortgagor*], his executors or administrators, could or might have held or enjoyed the same, in case these presents had not been made and executed, subject to the payment of the rent, and the observance and performance of the covenants and agreements, in and by the said hereinbefore-recited indenture of lease respectively reserved and contained, and henceforth on the tenant's or lessee's part to be paid, observed, and performed, but indemnified against, as hereinafter is mentioned; *And* also subject to the proviso or agreement for redemption of the same premises hereinafter contained (that is to say): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that if the said [*mortgagor*], his heirs, executors, or administrators, shall and do, on the day of , now next ensuing, well and truly pay, &c. (*nearly as ante*, p. 281); AND the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, COVENANT, promise, and agree, with and to the said [*mortgagee*], his executors, administrators, and assigns, in manner following: (that is to say), that he, the said [*mortgagee*], his heirs, executors, or administrators, shall and will well and truly pay, &c. (*as ante*, p. 283); *And* that he, the said [*mortgagor*], &c. (*covenants that he will pay and perform the rents and covenants in the lease, and indemnify the mortgagee therefrom; that the lease is valid; for quiet enjoyment after default; free from incumbrances; and for further assurance*); AND IT IS HEREBY AGREED AND DECLARED between and by the said parties hereto, that, on the death of any or either of them, the said [A. B.], [C. D.], and

*Habendum* for the remainder of the lives named in the lease, and as fully as the mortgagor could have held the same;

subject to the rent, &c., and to the proviso for redemption.

Proviso for redemption.

The mortgagor covenants with the mortgagee,

to pay the principal and interest; and for title.

Provision for renewal.

[E. F.], or of any other person or persons on whose life the said hereditaments and premises, hereby granted and released, shall from time to time be held, (*a*) it shall and may be lawful to and for the said [*mortgagee*], his heirs and assigns, while any monies shall remain due and owing on the security of these presents, to renew and keep renewed the lease of the said hereditaments and premises, in three lives at the least, and to pay the fines, fees, and expenses attendant upon such renewal; *And* that the said fines, fees,

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

---

(*a*) The following forms may sometimes be found useful:—

"And the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, further COVENANT, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that if any or either of the said persons upon whose lives the said respective premises now are or shall be held, shall happen to die before the said sum of pounds, and the interest thereof, shall be fully paid and satisfied, he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will from time to time, and at all times, within one calendar month next after the death of each and every such person upon whose life the lease for the time being shall or may be held, at his and their own proper costs and charges, purchase and take a new lease or new leases of the said premises, from the owner or respective owners of the fee simple and inheritance thereof (if he or they will consent and agree to grant the same), with the addition of such other person or persons in the room or stead of the person or persons so dying, as shall from time to time be nominated or approved of by the said [*mortgagor*], his executors, administrators, or assigns; *And* shall and will from time to time, immediately after such renewed lease or leases shall be granted to him or them, at his and their own costs and charges, assign over, convey, and assure such renewed lease or leases respectively, and all the estate, term, and interest of him, the said [*mortgagor*], therein (except to the said [*mortgagor*], his heirs and assigns, a reversion of six days out of the

Covenant and provisions in a mortgage of renewable leaseholds, for subjecting the new leases to the payment of the fines, fees, and expenses of renewal, with interest, as well as of the mortgage debt and interest.

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

and expenses, as also all payments, costs, charges, and expenses, which he, the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall or may expend, sustain, or pay, for or by reason or in respect of the non-payment of the rent, or the non-observance or performance of the covenants and agreements reserved and contained in and by the said hereinbefore-recited indenture

---

said renewed term or estate), unto the said [*mortgagee*], his executors, administrators, and assigns, for better securing to him and them the repayment of the said sum of pounds and interest, according to the true intent and meaning of these presents, and of the proviso or agreement for redemption hereinbefore contained: PROVIDED ALWAYS, and it is hereby covenanted, declared, and agreed, by and between the said parties to these presents, that in case the said [*mortgagor*], his heirs, executors, or administrators, shall at any time or times hereafter neglect or refuse to obtain and take a new lease or leases of the said premises, within the times and in manner hereinbefore mentioned, *Then* it shall and may be lawful to and for the said [*mortgagee*], his executors, administrators, or assigns, to surrender the said several recited indentures of lease hereinbefore released and assigned, and also such other lease or leases as shall be taken and renewed in the said premises, and from time to time to renew, purchase, and take a new lease or new leases of the said premises respectively, in his or their own name or names, either for the continuing or any other life or lives, or for a term or terms of years absolute or determinable on the death of one or more person or persons, or to take a new lease or leases of the same premises in reversion, determinable on the life or lives of any such person or persons as he or they shall think proper to add, *And* that the said [*mortgagee*], his executors, administrators, or assigns, shall not be compelled or compellable, either at law or in equity, to assign his or their estate, term, or interest, by virtue of or under this present assignment, or by virtue of or under such renewed lease

of lease, and which, on the tenant's or lessee's part, are or ought to be paid, done, observed, and performed, with interest for the same fines, fees, costs, charges, payments, and expenses respectively, after the rate aforesaid, to be computed from the time or respective times of advancing and paying the same, shall be charged and chargeable upon the said cottages or tenements, lands, heredita-

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

---

or leases, until payment and satisfaction to him and them, not only of the said principal sum of pounds, and all interest thereof, but also of the fine and fines paid for such renewal and renewals, and all costs, charges, and expenses relating thereto, to the amount of pounds, with interest for the same respectively, after the rate aforesaid; *And* it is hereby declared and agreed, that it shall and may be lawful to and for the said [*mortgagee*], his heirs, executors, administrators, and assigns, after default shall be made in payment of the said sum of pounds and interest, contrary to the true intent and meaning of these presents, and of the proviso or agreement for redemption hereinbefore contained, to enter into possession of the said messuages or tenements, lands and hereditaments, and to receive and take the rents, issues, and profits thereof, before the said [*mortgagor*], his heirs, executors, or administrators, shall have made such assignment, conveyance, and assurance of the renewed lease or leases, in manner hereinbefore covenanted and agreed to be made and executed, when and as often as he and they may think needful and necessary, for obtaining payment of the said principal monies and interest hereby secured, or intended so to be." (*From a printed Form by Mr. Coventry.*)

"AND IT IS HEREBY LASTLY AGREED AND DECLARED between and by the said parties to these presents, that in case either of them, the said [*cestuis que vies*], shall happen to depart this life during the continuance of the said sum of pounds and interest, or any part thereof, upon this security, it shall and may be lawful to and for the said [*mortgagee*], his executors, administrators, and assigns, at the costs and charges of the said trust estate, to

Agreement that, after the death of one of the *cestuis que vies* named in a lease, the life of the survivor shall be secured by way of further security to the mortgagee.

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

ments, and premises hereby granted and released, or intended so to be, and their appurtenances; *And* that the same cottages or tenements, lands, hereditaments, and premises, shall not be redeemed or redeemable until payment, as well of the same fines, fees, and expenses, and the interest thereof, as of the said sum of pounds, and the interest thereof. (*Proviso for limiting the*

---

insure and keep insured, in his or their own name or names, in any one of the public insurance offices in London or Westminster, the sum of pounds, to be paid on the death of the survivor of them, the said [*cestuis que vies*]; *And* that all and every sum and sums of money which shall become due and payable to the said [*mortgagee*], his executors, administrators, and assigns, upon or by virtue of any such insurance or insurances, as aforesaid, shall be held by him and them, *Upon trust* to deduct, retain, and pay, all costs, charges, and expenses, which he or they shall have paid, or become liable to pay, in procuring and keeping on foot the same policy or policies of insurance (so as the same do not exceed the sum of pounds), together with interest for the same payments respectively, after the rate aforesaid; *And*, after payment and satisfaction thereof, then *Upon trust* to deduct, retain, and pay the said principal sum of pounds and interest, or so much thereof as the same will extend to pay and shall be then due, and to pay the surplus (if any) unto the said [*mortgagor*], his executors, administrators, or assigns; *And* it is hereby agreed and declared, that all payments made by the said [*mortgagee*], his executors, administrators, or assigns, for or in respect of the said policy or policies of insurance, shall, to the amount aforesaid, with the interest for the same, stand and be charged upon the said hereditaments and premises hereby granted and released, or intended so to be, *And* that the same shall not be redeemed or redeemable until as well the same premiums and payments and interest respectively, as also the said sum of pounds and interest, shall be fully paid, satisfied, and discharged." (*Also by Mr. Coventry.*)

MORTGAGE OF RENEWABLE LEASEHOLDS FOR LIVES.

*amount secured by the last-mentioned clause to the sum of pounds*); PROVIDED ALWAYS, and it is hereby lastly agreed and declared, between and by the said parties to these presents, that until default shall be made in payment of the said sum of pounds, and the interest thereof, contrary to the true intent and meaning of these presents, and of the proviso or agreement for redemption hereinbefore contained, it shall and may be lawful to and for the said [*mortgagor*], his heirs and assigns, to have, hold, occupy, possess, and enjoy the said cottages or tenements, lands, hereditaments, and premises, hereby granted and released, or intended so to be, and their appurtenances, and to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any let, suit, trouble, denial, interruption, or disturbance whatsoever, of, from, or by the said [*mortgagee*], his heirs or assigns, or any other person or persons whosoever, lawfully or equitably claiming, or to claim, any estate in the premises, by, from, through, under, or in trust for him, them, or any of them. IN WITNESS, &c.

Proviso for quiet enjoyment by mortgagor until default.

---

### NOTICE *by a* MORTGAGOR *to a* MORTGAGEE, *of his intention to pay in the Mortgage-Money.*

SIR,

I hereby give you notice, that I shall, on the day of , now next ensuing (being the expiration of six calendar months from the date hereof), pay to you, your executors, administrators, or assigns, the sum of pounds, due and owing to you from me, on mortgage of my estates at , in the county of , by virtue of certain indentures of lease and release, bearing date respectively the and days of , and respectively made, or expressed to be made, between, &c. As witness my hand, this day of . [*Mortgagor*].

To [*Mortgagee*], of, &c.

NOTICE *by a* MORTGAGEE *to a* MORTGAGOR, *of his intention to proceed to a* SALE *of the mortgaged Premises, unless the Principal and Interest secured by the Mortgage are paid within six Months.*

SIR,

I do hereby give you notice, that unless the sum of pounds, which is due from you to me, on the security of a certain indenture of mortgage, bearing date the day of , and made between [A.B.], therein described, of the first part; yourself, of the second part; and me, of the third part; and grounded on a lease for a year therein mentioned or referred to, shall be paid to me on or before the day of , I shall, in exercise and execution of the power or authority to me for that purpose given and reserved, in and by the said indenture, cause the messuages or tenements, lands, hereditaments, and premises, therein comprised, and thereby conveyed to me, as therein is mentioned, and their appurtenances, to be put up to sale by public auction, at the Hop-Pole Inn, in the city of Worcester, as soon after the said day of as conveniently may be, and that I shall apply the money arising by such sale in the manner in the same indenture in that behalf mentioned and expressed.

To [*Mortgagor*],
of, &c.

I am, sir,
your's, &c.
[*Mortgagee.*]

# INDEX TO THE NOTES

IN

VOL. V.


A.

ATTORNEY,
as to securities to, for his costs, 508.
as to the effect the taking a security for costs has on the general lien of, on deeds and papers, 509.

ATTORNMENT,
when made on mortgage, 398, 399.

B.

BONA NOTABILIA,
what are, 180—182.

BOND,
on the propriety of taking a, as a collateral security to a mortgage, 251.

C.

COPYHOLDS,
as to building on, being waste, 361.
of the mode of effecting a mortgage of, 234.

D.

DISCLAIMER,
what amounts to a, 135—137.

E.

ECCLESIASTICAL PERSON,
where contracts by, for letting their lands, will be void, 2.

I.

INCLOSURE ACT,
power to mortgage under, 267.

## L.

LEASE,
provisions as to renewal of, by persons labouring under disability, 74.
guardians and minors, 74, 77.
femes covert, 74.
committees of lunatic, 75, 80.
by persons out of the jurisdiction of the court, 79.
fines to be paid on renewal of, how to be raised, 81, 82.
powers to, how to be executed when vested in persons labouring under disability, 85.
when lunatics may, lands of which they are seised in fee, 85.

LANDLORD AND TENANT,
where a tenant holds over after notice, remedy under the 4 Geo. II. c. 28, 46, 47.
who will be an agent under the statute, 47.
landlord does not waive his right by bringing an ejectment, 47.
where tenant holds over after notice by himself, he will be liable for double rent, under 11 Geo. II. c. 19, 48
what action tenant may maintain, 48.
what leases are within the statute, 48.
to what tenants the statute applies, 48.
when the landlord suffers the lessee to remain in possession and receives rent, 49.
remedies of landlord under 1 Geo. IV. c. 87, 50—54.

LETTERS OF ADMINISTRATION,
limited, when they will be granted, 178.
jurisdiction as to, 178—182.

LETTER OF ATTORNEY,
definition of, 140.
must be by deed, when, 140.
when, must be in writing, 140.
when by parol, 141.
by whom, may be executed, 141.
what acts are authorized by, 141.
as to revocation of, 141, 142.
practical directions as to, 142.
who may make, 143.
stamp on, 143.

## M.

MAINTENANCE,
usual provisions in wills and settlements for raising, 440—442.

MANUMISSION,
rules as to the, of slaves in our colonies, 204, 205.

MEMORIAL,
rules as to, of deeds and instruments, 206—211.
stamps on, 211.
practical directions as to, 219.
seldom made of a will, 223.

MORTGAGE,
what may be the subject of, 231, 232.
of the mode of effecting a, 232.
of freeholds, 232.
of copyholds, 234.
deed of further charge, 236.
of transfer of, 236.
of equity of redemption, 237, 565.
of reversion, 237.
of equitable interests, 238, 247.
an equitable, 247.
by deposit of title-deeds, 247.
by agreement, 250.
remedies of an equitable mortgagee, 250.
of collateral securities on, 251.
bond, 251.
warrant of attorney, 251.
of the delivery of title-deeds on a, 259—267.
power to make a, under inclosure act, 267.
by traders, 267.
as to taking accounts on a, 271.
practical directions as to, 225, 227, 279, 282, 283, 285, 297, 326, 350, 367, 369, 379, 389, 435, 450, 478.
as to insertion of powers of sale in, 301, 313.
increasing or lowering rate of interest in, 308.
reservation of a power of leasing in, 315.
the validity of a stock, 327, 355.
clause for allowing mortgage money to remain for a number of years, 372—378.
provisions for repayment of expenses in repairs, 377.
mortgages of leaseholds, 235, 383, 385.
, of furniture, 386.
disclosing in mortgage-deed the trusts of money lent, when advanced by trustees, 415—425.
whether mortgagor or mortgagee should bear the expense of a separate declaration of trust of the money lent, 427.
when the expression "rents and profits" will authorize a, 442.
as to, of a ship, 457—472.
observations on running securities, 480, 481, 482—496.

as to, by tenant in tail, 502.
to solicitors for their costs, 507—509.
of wife's estate for the debt of the husband, 568.
of policy of assurance, 578.

MORTGAGEE,
who may be a, 230, 231.
remedies of, on bankruptcy of mortgagor, 268—271.

MORTGAGOR,
as to covenant from, to produce title-deeds, 432.
should have a covenant from the mortgagee, to produce the title-deeds, 433.
who may be a, 227—230.
rules as to permitting, to retain title-deeds, 260.
remedies of mortgagee on bankruptcy of, 268.

P.

PORTIONS,
usual provisions in wills and settlements for raising, 441, 442.

PROBATE,
as to granting of, 179—182.

S.

STAMP,
on surrenders, 139.
letters of attorney, 143.
memorials, 211.
agreement to execute mortgage, 275.
running security, 480, 481.
mortgages, 253—258.
warrant of attorney as a collateral security, 515.

SURRENDER,
stamp on, 139.

T.

TENANTS IN COMMON,
what remedies, they have for rent, 27.

TITHES,
rent may be reserved out of, 2.

TITLE-DEEDS,
rules as to permitting a mortgagor to retain the, 259—267.

W.

WARRANT OF ATTORNEY,
on the propriety of taking, as a collateral security on a mortgage, 251.
stamp on, 515.

Recd. 1:79 SJD.